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ABSTRACT

The Pennsylvania Master Plan for Higher Education projected that, to meet the needs of the state in higher education, private colleges and universities, which presently enroll 55% of the state's students, will have to increase their enrollment by 39.5%. However, no provisions were made in the Plan to help these institutions do so. This report analyzes: the position of church-related institutions of higher education in the state; the proportion of the total state resources non-aided institutions provide and the burdens they assume; Pennsylvania's policy on church-related colleges and universities; and implementation problems not resolved by the Master Plan. Legal bases for state assistance to church-related institutions are discussed in terms of the nature of the constitutional problems and the position of the federal Constitution; legislative proposals to help implement the Master Plan, which include the creation of a Higher Educational Assistance Authority; and the economic and social bases for the proposed assistance. Relevant experiences in other states and statistical tables are included in the appendix. (AF)

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AN ANALYSIS OF THE PROPOSED MASTER PLAN FOR HIGHER EDUCATION FOR THE COMMONWEALTH OF PENNSYLVANIA

And

A Study of Financial Needs of Private Colleges and Universities And Proposed Solutions

The private colleges and universities of the State of Pennsylvania presently educate 55% of the college enrollment in the Commonwealth. The Master Plan projects that to meet the needs of the Commonwealth in higher education, these colleges should increase their enrollment by 39.5%. At the same time, the Master Plan does not provide any channel or mechanism through which this established need can be met.

William D. Valente, Villanova Law School Professor, has prepared a White Paper which sets forth the needs of our private, and church-related colleges and universities, and the legal framework by which they may be resolved within the context of the Pennsylvania Constitution and the Federal Constitution.

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GLOSSARY OF CITATIONS TO OFFICIAL SOURCES
AND DOCUMENTS

MP ... Master Plan for Higher Education by Pennsylvania State Board of Education, January 1967

CR ... Consultants Report to State Board of Education by Academy for Education Development, Inc. Elements of a Master Plan for Higher Education in Pennsylvania, December 1965

DPI ... Department of Public Instruction—the following Studies:

Projection of Selected Educational Statistics for Pennsylvania

Education Newsletters

Statistical Report of the Superintendent of Public Instruction (1965)

Reports of State Commission on Academic Facilities

OE ... United States Office of Education, Department of Health, Education and Welfare

Grants-in-Aid and other Financial Assistance Programs (1966 Edition),
U.S. Government Printing Office

Education '65, A Report to the Profession
OE-11006

Milestones in Education (88th Congress)
OE-10031-A (Rev. 1965)

Higher Education Act of 1965—Section by Section Analysis
OE-50045

I

Foreword

In his Education Message to Congress for 1962, President John F. Kennedy observed that: "Civilization is a race between education and catastrophe."

Since that message was delivered, the race has been aggravated by the steeply rising crises in American civilization; whether of the science explosion; of national security; of the massive dislocation of labor skills through technological change and automation; of the major concentration and constriction of 75% of our people in urban regions; or of a burgeoning population which not only has created critical shortages in the service and public health professions, but which is about to inundate our colleges and universities. According to the Consultant's Report to the Pennsylvania State Board of Education, Pennsylvania institutions are now operating near capacity and *all* of them will have to provide in ten years for massive physical facilities additions and classroom space (CR 109).

The Master Plan recognizes that such drastic growth in physical plant, not to mention teaching staffs and other operational necessities, in the short space of ten years, cannot be met by private capital support. It acknowledges the need for massive public financial support to achieve the public purposes served by higher educational institutions, which the Master Plan realistically describes as "Social Instruments" (MP-7). Unfortunately, with respect to the private and especially church-related institutions, the urgent necessities are not provided for by the Master Plan. Proven, concrete examples of effective public assistance to private institutions are available from the experience and programs of our neighboring states and of the federal government. Many significant aid programs do not even involve tax funds or the credit of the state. They, therefore, involve no constitutional problems whatever with respect to church-related institutions. This statement presents proposals which are not considered in the Master Plan, proposals which are necessary prerequisites to enable private institutions to achieve those heavy additional burdens which they are called upon to assume by the Master Plan. These proposals are presented with supporting legal and fiscal justifications.

The theme of this statement echoes that of the Preface to the Master Plan.

"The Master Plan takes cognizance of the wide variety of higher educational institutions in Pennsylvania. *Its effectiveness is based upon using the influence and the existing facilities and programs of all Pennsylvania colleges and universities, public and private.* The problem is not one of deciding in favor of some and against others, but, rather that

of deciding what roles each can play most effectively . . . and where the Commonwealth's responsibility for organization and financing rests. . . . This in no wise alters the position of the State Board of Education that the dual system of public and private education is a strength in the total picture and that the Commonwealth should take certain steps better to enable private institutions to make their appropriate contribution to the extension of educational opportunity. *One of the Commonwealth's major purposes must be to provide, in both public and private institutions, an undeniably high quality of higher education.*"

" . . . The Master Plan should be reviewed continually . . ."

(MP vii)

In the final revisions to the Master Plan, the State Board of Education acknowledged the need for closer analysis of the problems facing the private institutions, by the creation of a new unit within the State Council of Higher Education to provide a voice for private higher education in the development of Pennsylvania's total program. (MP viii 5, 40 DPI Newsletter, Sept. 1966. See also CR 67, 69).

As will appear from the contents of this statement, the State Board apparently did not have the opportunity to consider fully either the impact of its proposals upon private institutions, or of certain programs by which the state's policy concerning the educational efforts by such institutions could be practically implemented.

"The Plan is, therefore, a series of goals, targets and directions which, if embraced and approved as public policy by the Governor and General Assembly, can provide a rationale for specific decisions as they must be made" (MP 1).

By providing to the executive and legislative authorities constructive suggestions in addition to those reflected in the Master Plan itself, and a specific model of legislation (Appendix XI) the sponsors of this statement seek to exercise their civic as well as educational responsibilities. The suggestions advanced herein are a response to the State Board's stress that the Plan is but a beginning, and that constructive proposals will be welcome.

Most of the considerations raised by this paper with respect to church-related institutions, apply equally to all "non-aided" private institutions. Separate comment regarding the church-related institutions is deemed necessary, however, to meet squarely and rationally the problem of determining the proper constitutional limitations upon public financial or other

assistance to such colleges. This important problem is not touched upon either by the Master Plan of the State Board of Education, or by the report of its principal consultant (The Academy for Educational Development, Inc.). Continuing confusion and uncertainty on this head can only paralyze and prejudice state assistance programming for church-related institutions. Many, though not all, forms of state support to church-related higher education can and should be lawfully included in the official implementation of the Master Plan; assistance which will violate neither in word or spirit, the constitutional interdictions against undue involvements between church and state. The legal issues are thus considered with specific reference to each concrete proposal in Part III hereof.

The State Board's urgent theme, that the Master Plan requires *total* effort and the maximum utilization and growth of every higher educational resource in the state, necessitates this study of performance feasibility by private institutions.

Part II of this statement sets forth the basic conditions and operational factors affecting private institutions of higher learning with relations to the goals assigned to them by the Master Plan. With enrollments expected to increase from 293,000 to 518,000 students within eight years, requiring 27,000 new faculty members (MP 1), current problems cannot be deferred to future consideration.

The legislative proposals advanced in Part IV will assure, at great economies to the state, the increased educational capacity which is sought by the Master Plan. As general avenues of practical legislative achievement, these proposals may well be refined by experienced lawmaking officials, but, hopefully, they

illustrate additional practical avenues of state assistance to private higher education, which, in the words of the Master Plan, may thus continue to "relieve the Commonwealth of a major financial obligation" (MP 4).

For the most part, the data cited in this statement is drawn from official government sources. These indispensable compilations of pertinent information (without which this statement would not be possible) represent the efficient efforts of public officials and their staffs, whose collection, analysis and arrangement of statistics enliven our understanding of current educational problems. The sponsors of this statement are particularly and continually grateful to the dedicated personnel who produced these source documents.

It should be noted that, in some instances, sources cited for the same purpose may disclose some variations. Unless the variations substantially affect the particular point for which such sources are cited, no notation or reconciliation concerning the same are attempted. So read, the sources employed are sufficiently accurate and reliable for the purposes of this statement.

Full educational achievement, through maximum utilization of educational resources at minimal taxpayer cost with continued diversity, private enterprise, and freedom of choice of schooling in higher education, are the commendable goals of the Pennsylvania Master Plan. If this statement in any wise advances those goals, it will have served its purpose.

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II

The Position of Church-Related Colleges and Universities Within the Higher Educational Community in Pennsylvania

A. PRESENT CONDITIONS

1. The Proportion of the Total State Resources and Burden Provided and Assumed by Non-Aided Colleges and Universities

a. INSTITUTIONAL AND ENROLLMENT CAPACITY (1966)

Out of 145 institutions, 118 are "Private," 104 are private and non-aided; of which 63 are church-related and 41 are non-denominational (CR 21-26; MP c. VI, VIII; Pa. Man. 785 (1966)).

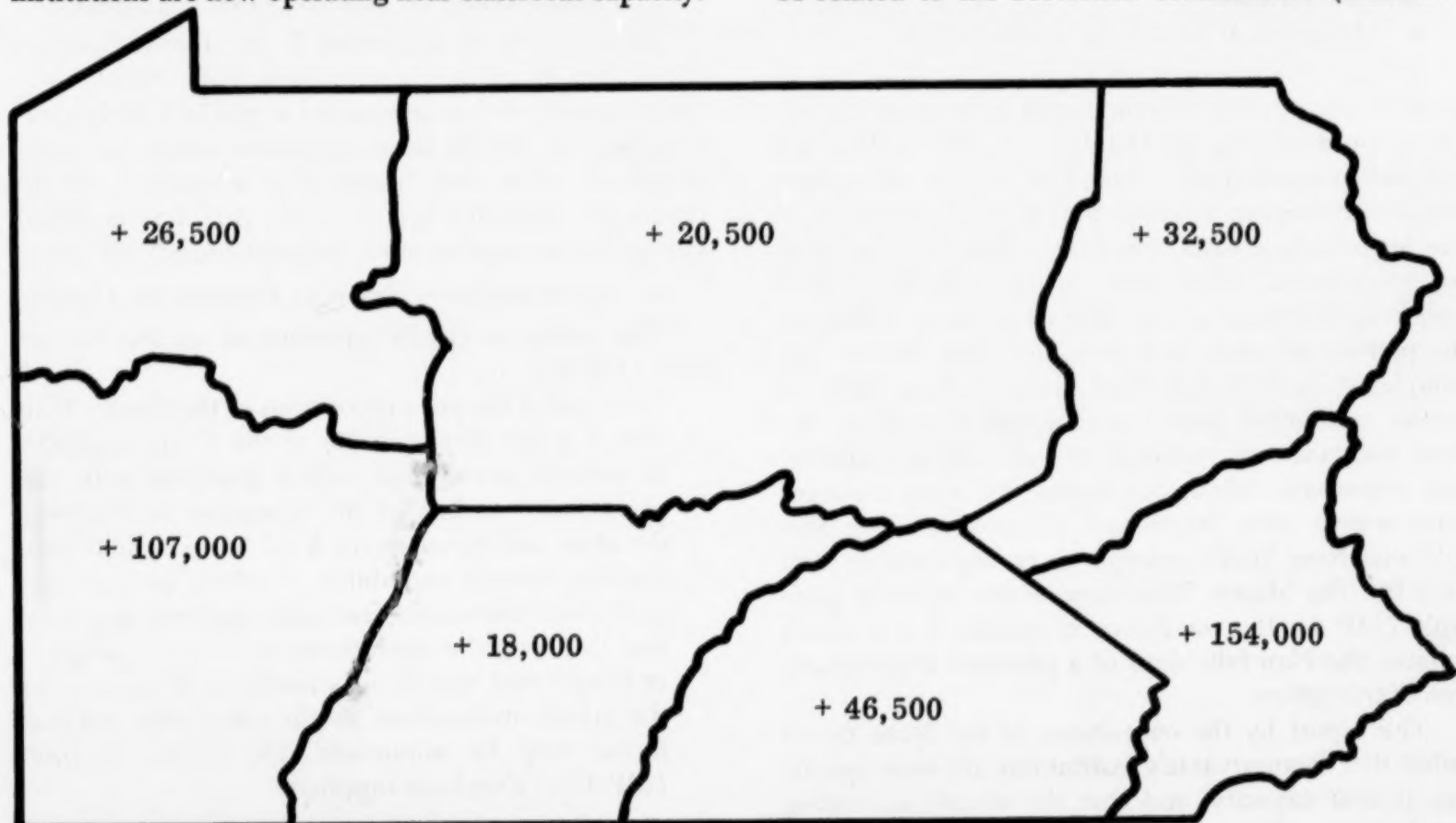
Of the total state college level enrollment in 1965, the *non-aided* private institutions educated 123,650 or 42% of the total student body (CR, chart 2, p. 2; MP Fig. 2, p. 13). And, as shown in subsection (2) following, these institutions must expand drastically to carry a somewhat lower percentage of the projected total capacity needed by the state in the current decade. All institutions are now operating near classroom capacity.

b. GEOGRAPHIC DISPERSION OF COLLEGES AND UNIVERSITIES

At present, the state-aided institutions other than state colleges are concentrated in the metropolitan regions of Philadelphia, Pittsburgh and in the Penn State campus area. To a considerable extent the geographic dispersion of schools which is necessary to serve the educational needs of local residents who cannot pursue education away from home is presently provided by the widely dispersed non-aided colleges. The continuing need for such geographic dispersion of educational centers is shown by the following chart.

c. DIVERSITY OF EDUCATIONAL TRADITIONS

The diversity of orientation in the non-aided private college group arises not only from the differences between the denominational and non-denominational colleges; but also within the group of 63 church-related colleges. About 11 different denominations are represented, with 19 related to the Catholic community and 44 related to the Protestant communities (American



Source: CR Chart 3, p.14.

**Estimated Additional Number of Pennsylvania Students
Seeking Higher Education
By Geographic Area
1965-1985**

Universities and Colleges, 9th ed. 1964, p. 951, et seq.).

As a classified group, church-related institutions provide the greatest number of educational institutions in the state.

The diversity of world view and life perspectives presented by these colleges covers a broad spectrum of accommodation to the intellectual orientation that different students may desire. It also enriches the span of knowledge by manifold perspectives of the physical order and social functions. These values of diversity are singled out by the Master Plan as educational assets which the Commonwealth should preserve and strengthen by appropriate assistance (MP 39).

"That higher educational opportunities should be widely distributed and adequately diversified is an accepted concept" (CR 2). "No single type can be all things to all people" (CR 33).

The venerable history of these institutions and the legions of alumni graduates trained therein, the overwhelming majority of whom are Pennsylvania citizens, are sufficient marks of achievement to demonstrate their service to the citizens and economy of Pennsylvania. As is well known, *all* of these institutions are accredited by the Middle Atlantic States Association of Colleges. (American Universities and Colleges, 9th ed. 1964, p. 951).

2. Commonwealth Policy on Church-Related Colleges and Universities

a. MAXIMUM UTILIZATION OF FACILITIES

In his major statement on higher educational policy to the Committee of 100 for Better Education, former Governor Scranton, on October 10, 1962 called for "an *independent* State Council of Higher Education which will prepare a master plan for *full utilization of our higher educational resources*." This could be done by "going public" all the way, as in California, wherein public institutions dominate the scene; or by following the pattern initiated by former Governor Dewey and completed by Governor Rockefeller in New York, to render substantial public institutional as well as student assistance, to maintain private college capacity and expansion while developing an even stronger state system. New Jersey and Connecticut have also followed New York's example as is explained in Part IV infra. The Master Plan supports this policy in principle (MP 4). But, as shown in section 3 (a) which follows, the Plan falls short of a practical implementation of this policy.

The report by the consultants to the State Board noted that Pennsylvania's institutions are now operating at near capacity, and that the *steeply increasing enrollments will require both facilities expansion and better utilization of facilities* (CR 109-125). Most of the consultants' suggestions merit implementation, but they are not embraced in the Master Plan. Some of them are, however, treated and espoused in Part IV of this statement.

b. EXPANSION REQUIRED TO MEET MASTER PLAN GOALS

The primary stress of the Master Plan is the fact that present enrollment capacity in Pennsylvania must expand in a revolutionary manner to absorb steeply rising enrollments which will almost double between 1965 and 1975 (MP 13; CR 8; DPI Newsletter, Oct. 1966). The expansion goal assigned by the Plan to the private institution groups amounts to a 40% increase (from 162,000 students to 226,000 students) even though the private non-aided colleges indicated their hope to expand by only 25% (MP 13). These hopes, moreover, were not voiced in the context of adverse competitive factors later introduced by the Master Plan. The Plan notes that facilities expansion requires huge capital expenditures (MP 56), but as demonstrated in the following subsection, adequate and feasible provision for such expenditures is *limited* to the 35 institutions* within a preferred, assisted group. The non-aided colleges, as shown hereafter, are the least able to finance additional capital facilities, whether on the basis of endowments, annual givings, or the limited federal assistance that is available. *Part IV hereof indicates the measures pursued by neighboring states to expand the financial bases for facilities growth by all institutions without tax contributions, or costs to the state.*

c. PRESERVATION OF PENNSYLVANIA'S TRADITION

As indicated in subsection 2 (a) above, Pennsylvania, like its sister states in New York, New Jersey and Connecticut, has announced a goal of a "balanced" program, not only for fiscal economies and preservation of private effort and incentive in education, but to retain the diversity in education that has enriched Pennsylvania's system since colonial times (MP 53).

d. ACCOMMODATING STUDENT FREEDOM OF CHOICE

The policy is clearly pronounced in the Master Plan (MP 54):

"It is one of the pre-suppositions of the Master Plan that it is the *responsibility of the Commonwealth* to provide every high school graduate with the opportunity to further his education in whatever direction and to whatever level are commensurate with his interest and ability . . . there are manifest individual differences and some students may well find their greatest opportunity in terms of program or intellectual climate in attendance at one . . . of the private institutions. *To the extent that the cost factor may be minimized, the choice is free*" (MP 37). (Emphasis supplied)

The Master Plan, however, does fail to consider that the inability of the private institutions to provide the classroom space and teachers can endanger a student's freedom of choice, as much as his inability to meet particular tuition costs.

*Excluding Community Colleges.

e. METHODS OF EDUCATIONAL ASSISTANCE APPROVED BY THE MASTER PLAN

i. *Operational Cost Subsidies.* The Master Plan limits these subsidies to the institutions within the Commonwealth system.

ii. *Capital Facilities Assistance.* The Master Plan approves a general program for capital facilities expansion but, as hereafter demonstrated, provides only one very limited program for private institutions.

iii. *Student Assistance.* The Plan approves the general policy of student assistance, but limits its suggestions to scholarships and loans, without reference to other needed forms of student services.

iv. *Assistance for Programs of Special Public Interest.* Among the recommendations for programmatic assistance in the Master Plan are the improvement and support of graduate education, college teacher incentives, research activities, and community service (MP 1, 2, 4). These and many other special programs of critical public import afford avenues for meaningful involvement and support of private institutions in the educational assistance programs of the state, but concrete legislative proposals are not pursued in the Master Plan to any significant degree. Some proposals on this subject are advanced in Part IV hereof.

3. Implementation Problems Not Resolved by the Master Plan

a. FAILURE TO CONSIDER INSTITUTIONAL NEEDS AND FINANCIAL LIMITATIONS IN STRUCTURING AID CATEGORIES AND CONDITIONS

Unless the state's overall assistance to higher education is allocated in a meaningful way among the various needs and ends sought to be met, it cannot succeed. The division of the financial resources under the Master Plan is primarily geared to categories of assistance, but there is no attempt to relate either the aid categories or the total financial assistance allocations to the educational burdens, needs and financial capability of each respective group of institutions. The Master Plan goals are thus mismatched to its financial proposals, and the goals remain beyond feasible reach. The Plan acknowledges the primary consideration of economic necessity and feasibility by preserving to certain state-aided private institutions significant forms of state aid (MP 40). This treatment of the need factor should apply as well to the other 104 private colleges which are presently excluded from the great bulk of state assistance.

Further, projected budgeting of state assistance between state-aided and non-state-aided institutions cannot be justified by categorizing any group of institutions as state-related or state-aided when, in fact, all such institutions, other than state colleges and community colleges, are *not* subject to effective government control.

The imbalance of resource allocations is illustrated by the following Master Plan suggestions:

(1971-72) For 35 state-related and state-aided institutions—\$300.4 million.

(1971-72) For all institutions—Professorial Incentive—\$4 million.

(1971-72) For doctoral programs largely confined to the state's four large universities—\$8.9 million (see Appendix I hereto).

* (1969-70) For 118 private institutions—capital assistance (on a two for one matching basis)—\$52.5 million (MP 41, 42).

* (1968-69) For all institutions—State scholarships—\$40 million.

Thus, the 118 private institutions presently carrying 55% of the enrollment burden at the undergraduate level are asked to expand by 39.5% in ten years, and for this drastic need, the Plan allocates 14% of its total higher educational assistance. And this only on a matching grant basis which, in view of the established financial limitations of such institutions, will, in all probability, be practically usable by only a small number of the non-aided institutions.

As shown by Appendix II, 8 of the approximately 35 state-aided and related institutions have endowments in excess of \$3 million, while only 18 of the 104 non-aided private institutions have endowments of more than \$3 million. Moreover, half of the 18 non-aided institutions which hold endowments of \$3 million enrolled, as of 1963, less than a total of 1,000 undergraduate students (Appendix II; Statistical Report, Table 52). Reference to Table 52 will disclose that many of the non-aided colleges and universities with endowments well below \$3 million, have been carrying an undergraduate enrollment capacity equal to or far in excess of relatively few financially strong colleges in the non-aided group.

It is clear that there is a major disproportion between the rate of expansion in enrollment assigned by the Master Plan to non-aided institutions, and proposed financial assistance to these same institutions, especially as compared to the assigned burdens and assistance to state-aided institutions.

This disproportion is graphically demonstrated by Chart V (p. 23) of the Projections of Selected Educational Statistics for Pennsylvania to 1975-1976, which was issued by the Bureau of Statistics, Department of Public Instruction (Harrisburg, Aug. 1966). The Chart is reproduced in Appendix I. This Chart draws a dramatic contrast between the drastic expansion projected for non-aided institutions, and the relatively small expansion projected for the state-aided private institutions.

The total amount of "capital" assistance suggested for private institutions of \$26.4 million for 1967-68 is available only to institutions which can *match* the

*Unfortunately, the Master Plan does not present figures for a comparable time period.

state grant, 2 for 1 (MP 39). Since the state grants approximate 1967 federal higher educational facilities allocation to Pennsylvania, a private institution, even under ideal conditions, must raise $\frac{1}{3}$ of its capital construction costs before undertaking a building with both state and federal assistance. Thus, the great number of private non-aided institutions with endowments of less than \$1.5 million (Statistical Abstract, Table 52), even if their entire endowment were unrestricted, could not hope to achieve the 41% increase in classroom capacity as called for by the Plan. Without these private grants or substantial supportable loans, endowment patterns rule out any prospect of a surge of massive private grants. The history of deficiencies between available federal loan funds and the sums applied for by all institutions affords no basis for financial solutions by federal loans (see e.g. Education '65, U. S. Office of Education, OE 11006, p. 22).

In testifying before the House Committee on Education with respect to the 1966 Higher Education Amendments, U. S. Secretary of Health, Education and Welfare, Hon. John W. Gardner, stated:

"It is difficult to exclude the possibility that in 1974 American institutions of higher education will have to provide for almost 4 million more students than they did in 1964.

* * *

... we believe that there may still be an unmet need of over \$2 billion at the end of fiscal year 1971, even if Federal assistance should be available each year in the amounts we are proposing for fiscal year 1967" (Hearings, Higher Education Amendments of 1966, U. S. House of Representatives, Committee on Education and Labor, pp. 27, 41).

As the Consultants to the State Board of Education reported:

"Neither is it wise to overestimate the ability of the present colleges and universities to handle the growing enrollment load without massive grants and appropriations from local, state and federal government agencies" (CR 13).

The carrying charges on loans covering classroom facilities (to which the Master Plan grants are limited) cannot be fully serviced on a pay-as-you-go basis, as in the case of dormitories. Hence, the matching grant restrictions of the Master Plan will preclude the weak private colleges from sharing even in the limited capital facilities program. And the final cloud is placed over the church-related colleges by constitutional objections raised in some quarters to any state grants to them.

Tuition charges cannot generate funds for capital expenses. The official studies of the United States Office of Education (as reported in DPI Newsletter, Dec. 1966, p. 5), established that the actual costs

of educating a full-time student far exceeds tuition payments:

"At the college and university level, spending for each full-time student averaged \$2,442 last year, about 35 percent more than the average of \$1,815 ten years earlier. In 1975-76 colleges are expected to spend \$2,976 per student, up about 22 percent from last year. Private institutions show higher figures: \$1,875 (1955-56), \$3,102 (1965-66), and \$4,294 (1975-76.)"

Further, the adverse competitive factor arising from extreme tuition gaps already existing between private non-aided institutions and state-aided institutions, precludes any possibility of increasing tuition to pay for new classroom construction.

"The dollar gap between costs at public and private institutions grows greater every year. To tell institutions . . . that the solution . . . is to raise their fees, to charge to actual costs, and to use long-term loans to finance needy students is to ignore entirely the competitive situation" (Dr. John F. Morse, American Council on Education).

The fact is that American colleges and universities already trebled their expenditures from \$5 billion to \$15 billion in the decade ending in 1965 (DPI Newsletter, Dec. 1966, p. 4). Under official projections from 1965 to 1975 (see e.g. Projections of Selected Educational Statistics for Pennsylvania to 1975-76, Department of Public Instruction's Bureau of Statistics) similar massive expenditure increases will be required before 1975. Such expansion cannot be generated from standard loans or private resources.

The imbalance between the financial assistance proposals in the Master Plan and its call for continued growth in all institutions, may also be seen in the following facts. The Plan requires \$18 million annually for operational subsidies to state-aided private institutions (MP 41), with no subsidy whatsoever for operational costs to non-aided institutions, even though the latter are the least able financially to assume their large part of the educational burden. By 1971-72, the Plan proposed operational subsidies of \$300 million for institutions currently enrolling a minority of students, and which will then enroll a slight majority of students (MP Fig. 1, p. 12). All the other institutions are assigned no such subsidy (Section II-A-1 above). Since all higher education institutions are now operating at near capacity (CR 109), the wherewithal to achieve such massive expansion in the excluded institutions is neither indicated nor realistically considered.

Whether by operational subsidy or its capital assistance suggestions, the Plan benefits the institutions that are, relatively speaking, in the strongest financial position, and thus magnifies the dilemma facing the neediest college group, which is also educating a very large proportion of the total college level constituency. A hopeful note may be sounded if the proposals set forth

in Part IV, many of which have been implemented and proven in neighboring states, are adopted.

As Logan Wilson, President of The American Council on Education, put it recently (*Higher Education and National Affairs*, June 23, 1966):

"When all is said and done about the importance of upholding private higher education, it turns out that more is said than done. As a firm believer in a dual system of higher education, I contend that the trend toward a monolithic scheme is neither desirable nor necessary."

b. TUITION GAPS; TUITION SUBSIDIES; AND INHERENT LIMITATIONS OF TUITION ASSISTANCE

In the past few years, Pennsylvania, through its Higher Education Assistance Agency, has enabled thousands of students, by grant or loan, to pursue their higher education (DPI Newsletter, Nov. 1966, p. 2) and the Master Plan commendably calls for drastic expansion of these forms of student assistance. Tuition subsidies, however, represent primarily a financial aid to the student, and cannot significantly enable the institution to raise capital funds.

As noted above, the cost of educating a student almost universally exceeds the tuition charge. The recent experience in New York State, which has pursued a massive scholarship and student assistance program, has not enabled independent colleges to meet their financial commitments. Their crisis led Governor Rockefeller to appoint a Select Committee of distinguished educators and citizens "to preserve the strength and vitality of privately financed colleges and universities." (See N. Y. Times, March 5, 1967, Sec. 1, p. 1, 42; excerpt attached hereto as Appendix III.) As shown in Part IV and V, our neighboring states of New Jersey, New York and Connecticut, have adopted means other than tuition subsidy to make possible the expansion of private educational facilities.

The tuition gap created by selective state aid to state-aided institutions to the extent of approximately \$1,000 per student, is ameliorated, though not equalized or overcome, by direct student aid. Necessary and commendable though this form of aid be to student freedom of choice, it is not designed nor expected to provide equal opportunities to private institutions to expand along with the state-related and state-aided institutions.

c. THE BRAIN DRAIN BY SUBSIDIZED INSTITUTIONS

The resource limitations of non-aided private institutions, as aggravated by selective state assistance to a limited number of other institutions, places the former group under serious, cumulating disadvantages in their struggle to maintain quality education. They are finding it increasingly difficult to share equitably in the available pool of talented teachers, students and researchers, many of whom are driven to state-subsidized schools by economic pressures.

Continuing loss of faculty and student resources is pointed by the lure of distinguished professors and students from private institutions to state-aided institutions.

The following excerpt from the Wall Street Journal makes this point:

"Many public institutions are growing fussier about whom they will admit. *Pennsylvania State University*, one of the more selective, now discourages applicants not in the top fifth of their high school classes from even applying. Next spring it plans to require all applicants to take the same College Entrance Examination Board tests now standard at many top-ranking private colleges."

* * *

"Public universities also are luring more of the very top students. Five years ago, when the National Merit Scholarship Corp. began making its highly competitive awards, only 17.3% of the winners chose to use the prize money at public institutions. Last fall this percentage had inched up to 21.8% even though prestigious private institutions still got a heavy majority. The awards come from funds provided by the Ford Foundation and corporate donors.

"Part of the reason for this gain, *Penn State's* president, Eric A. Walker believes, is because many state universities offer big-name professors and research equipment superior to that found in some smaller private institutions."

**TWO STATE UNIVERSITIES
ABSORB PRIVATE COLLEGES**

*By a Wall Street Journal
Staff Reporter*

Public universities are not only growing faster than private colleges, they're also taking over some of them.

The University of Buffalo, with over 11,000 students, was recently absorbed into the multi-campus State University of New York. The University of Houston, a private institution with 12,000 students, will become part of Texas' state university system in September 1963.

Money appears to be the main reason. Neither of these institutions faced immediate financial hardship. But, lacking big endowments, they were having difficulty expanding. "We were forced to seek some means of public support," says Patrick J. Nicholson, Houston University's vice president.

"If you want to study nuclear physics and play around with a nuclear reactor, you can't do it at a small liberal arts college," he says. "*By dangling higher salaries and better research opportunities than are available in the poorer private colleges, state institutions are attracting more top-flight teachers.*" "*Raiding*" of smaller private campuses is on the increase.

* * *

TAXPAYERS' BURDEN GROWS

The vast expansion in physical plants and enrollments is *costing taxpayers a lot of money*. State legislatures have appropriated a record of \$1,654,000,000 to operate four-year public colleges and universities in the current academic year, or 23% more than only two years ago. That doesn't count appropriations for construction, currently estimated at \$400 million a year, and an estimated \$71 million for public junior colleges. (Emphasis supplied)

Report, *Wall Street Journal*, May 31, 1962; pp. 1, 11.

The U. S. Office of Education Survey of Federal Programs in Higher Education (OE 50033, Bulletin 1963, No. 5), demonstrates the marked concentration of public assistance in a few institutions:

"Federal research funds are concentrated in universities. Of all funds for research in . . . 1960, 68 percent went to 25 universities; 82 percent went to 50, and 94 percent went to 100" (p. 7).

"In fiscal year 1959, 100 universities and colleges received 96 percent of the amount of all grants made for facilities and equipment" (pp. 8, 9).

"The following 25 institutions received 44 percent of Federal funds for education and training in fiscal year 1959 . . ." (p. 13).

"In 1959, awards at the graduate and professional levels of training . . . went to full-time students at fewer than 125 colleges and universities. . . . Fifty of these . . . had 79 percent of all fellows and 25 had 62 percent" (p. 15).

". . . The expansion of fellowship opportunities through Federal and other programs in more departments of more institutions is strongly indicated" (p. 36).

"*Current Federal activities tend to increase the gap between the strong and the less strong institutions, to further the separation of graduates from undergraduate instruction, to increase the reward and prestige of research in comparison with teaching, and to lower the morale of faculty members in fields not well supported*" (p. 46). (Emphasis supplied)

The seriousness of this excessive, if unwitting, concentration of high quality education into a narrowing group of educational centers was emphasized by Edith

Green, Chairman of the House Special Sub-committee on Education, in her Burton lecture at Harvard University in 1963 (published by Harvard University Press as "Education and the Public Good" in 1964).

"More than 90% of all of the research funds, federal in origin, are spent in fewer than 100 institutions of higher learning. Is this necessary? How many institutions have the kind of program that would qualify them for this research? What is our concern—what should be our concern with the other 1900 plus institutions?"

How can the federal government, entrenched in the educational process as it is, help to bring about a widening circle of centers of excellence as recommended by the President's Science Advisory Committee?" (Green, op. cit. supra, p. 25)

An aid policy by government which achieves such results was also deplored by Dr. James B. Conant in his recently heralded study entitled, "Shaping Educational Policy":

"Except for the unique role played by the private four year liberal arts college, *there is no reason to treat the support of private and public institutions separately in terms of shaping policy.*" (Conant, supra, p. 77)

"At the level beyond the high school, plans cannot be made by the state alone, nor by private institutions alone, nor by Washington alone. *But no nationwide policy can be successfully formulated if any one of the three is excluded.*" (Conant, supra, p. 110) (Emphasis supplied)

The foregoing facts and expert observations make it imperative that the Master Plan maintain a balance of fair opportunity to all institutions to maintain a tolerable quality as well as quantity in their educational efforts. That goal is undermined more by fiscal disadvantage under state assistance between groups of colleges, than by the limited amount of funds that are made available to any one group of colleges.

d. FAILURE TO CONSIDER AND CLARIFY CONSTITUTIONAL ISSUES REGARDING CHURCH-RELATED INSTITUTIONS

As indicated in the Foreword, the Master Plan does not address itself to constitutional problems of aid to church-related institutions. This silent treatment unnecessarily beclouds the feasibility of any one of a number of possible forms of assistance. To this extent, the Plan deters active consideration of such assistance. If the state is to seek effective means of aiding the private, church-related institutions which constitute almost 50% of the state's higher education community, these legal problems must be faced clearly, candidly, and rationally. The following section attempts to clarify the important constitutional issues.

III

Legal Bases for State Assistance to Church-Related Higher Education

A. NATURE OF CONSTITUTIONAL PROBLEMS

Preliminary to considering, the legal authorities, it is well to note certain aspects of constitutional jurisprudence which preclude any broadside, simplistic conclusions concerning the power of government to assist church-related higher education. Constitutional limitations can only be determined with separate reference to each of the state and federal constitutions, and then only under specific provisions of each charter. The level of certainty also varies with each form of educational assistance program in a very wide range of such programs. If, therefore, the state desires to implement its policy of devising constitutional means of aiding higher education wherever possible, the responsibility of careful analysis of each specific proposal with respect to each relevant constitutional provision cannot be avoided.

In the absence of squarely controlling judicial precedent, legal guidance is also provided by the judicial expressions in kindred cases; by the judgments and practices of the legislative and executive officers of government, and by leading constitutional law scholars. This paper will present the constitutional positions which seem to be supported by the foregoing types of legal authority, with respect to the following major types or categories of educational assistance.

- (a) Forms of Student Assistance by Government
- (b) Unrestricted Aid to Church-Related Colleges and Universities
- (c) Restricted Special Purpose Capital Facilities Grants
 - (I) Capital Facilities
 - (II) Student Service Facilities
 - (III) Instructional Equipment and Materials
- (d) Restricted Special Purpose Assistance to Perform Defined Programs of Critical Public Need
 - (I) Incentive Programs to Prospective College Teachers
 - (II) Fellowships
 - (III) Special Training Programs (e.g., education, nursing, vocational rehabilitation)
 - (IV) Community Service Programs (e.g., research and development)
 - (V) Inter-institutional Cooperation
 - (VI) Informational Services to Educational Agencies

As shown by Appendix V hereto, practically all of the above listed forms of educational assistance, ex-

cepting only item (b) (Unrestricted Aid), are presently provided to church-related colleges under a wide range of federal laws.

1. Student Assistance by Government

Both the federal and state governments have student scholarship and loans programs, applicable to students in church-related colleges. These have not been seriously questioned. The 1963 Constitutional Amendment to Article III, Section 18 of the Pennsylvania Constitution removed any doubt as to this form of aid. Indeed, the denial of such aid to a student would place the harsh, if not unconstitutional, price upon his freedom of mind and choice of schooling. Accordingly, it is not considered necessary to discuss herein the constitutionality of this form of assistance.

2. Unrestricted Aid to Church-Related Colleges

Government assistance to a church-related institution, without restrictions, or justification in a secular public purpose would raise grave constitutional questions. However, no such assistance has been seriously proposed in recent years, at either the state or federal level, and no such assistance is proposed herein. The constitutionality of such form of aid is accordingly not pursued in this paper.

3. Restricted Special Purpose Capital Facilities Assistance

As above noted the federal government has provided very sizable aid programs to enable institutions, including church-related institutions, to erect and expand capital "academic" facilities and to install critically needed instructional equipment and materials. Pennsylvania, by its state officials, has fully participated in these programs, without any constitutional objections or reservations, inasmuch as they achieve a primary public purpose and effect, for the benefit of all citizens, and their consequences to religion are remote at best.

It is hardly likely that such federal programs, which also involve the use of the state government machinery and employees, and in some cases, matching grants by the state, would have been approved by the state government officials, who are sworn to uphold both the federal and state constitutions, had they any serious constitutional reservations under the state or federal constitutions.

To date no court has been asked to nullify any of the federal facilities grant laws, and they therefore provide models for state legislation to the extent that

they do not contravene any unique limitations under state constitutions. One thing is clear; without such laws, the tremendous growth in higher education required in this era, would not have been remotely possible.

4. Assistance to Perform Special Activities of Critical Public Need

Treating colleges and universities as the social instruments which they are, the federal government has subsidized, in all such institutions, by public funding, programs designed to meet special critical needs of the community, whether in the public health professions, areas affecting national security, vocational rehabilitation, the complicated problems of cities, or the full utilization of physical and intellectual resources needed by the entire community, through inter-institutional cooperation. Many of the forms of programmatic aid listed under (b) above are also recommended, in general terms by the Master Plan. For reasons stated under sub-section (c) above, it seems clear that government subsidy of programs so clearly designed to serve the public interest has not been considered to raise any serious constitutional problems under the federal constitution, nor, to the extent of state government involvement therein, under the state constitution. As shown by the note in Appendix V, Pennsylvania has participated very extensively in these federal programs.

B. THE FEDERAL CONSTITUTION

1. Text and Theory

By judicial interpretation of the Fourteenth Amendment, the following religion clauses of the First Amendment have been made applicable to the states:

"Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. . . ."

While the "establishment clause" has not been considered by the Supreme Court directly with respect to state assistance to church-related higher education, there is a body of federal cases treating the establishment clause which does provide guidelines as to its operation. The cases confirm the conclusion that the question of government-religion involvement is not an abstract or absolute proposition; that the constitutional goal is to preserve religious liberty by insuring government "neutrality" to religion; that the question of "neutrality" depends on the impact of government action under contemporary circumstances, with a balancing of those factors which tend to place government in an extreme position of either undue hostility or undue preference to institutions related to religious communities. The cases reflect the concern that modern government necessarily touches and influences many areas of personal values and formation through its power of public taxing and spending for education; and that the ideal of providing equal treatment and

equality under the law to all citizens irrespective of their free choice of educational outlook and institution becomes more crucial each year. Since the domain of education belongs exclusively to neither government nor church-related institutions, the interaction between such institutions of society is unavoidable. The following excerpts from the latest opinions of the Supreme Court reflect these elements upon which contemporary constitutional interpretation rests.

"For not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions." (Concurring opinion—Brennan, J.—*Abington School Dist. v. Schempp* 374 U. S. 203 (1963) at p. 294)

"But the several opinions (Supreme Court cases) make sufficiently clear that 'separation' is not a self-defining concept. Agreement, in the abstract, that the First Amendment was designed to erect a 'wall of separation between church and State,' does not preclude a clash of views as to what the wall separates."

* * *

"... As the State's interest in the individual becomes more comprehensive, its concerns and the concerns of religion perforce overlap. State codes and the dictates of State tax the same activities. . . . No constitutional command which leaves religion free can avoid this quality of interplay." (Concurring opinion—Frankfurter, J.—*McGowan v. Maryland*, 366 U. S. 420 (1960), at p. 461)

* * *

"Examples could readily be multiplied, for both the required and the permissible accommodations between church and State, the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns . . . of the other."

"... It is of course true that great consequences can grow from small beginnings, but the measure of constitutional adjudication is the ability and willingness to distinguish between real threat and mere shadow." (Concurring opinion—Goldberg, J.—*Abington School Dist. v. Schempp*, *Supra* at 306, 308)

2. Judicial Authority

The closest decisions of the Supreme Court relating to a federal grant of moneys to a church-related institution, is *Bradfield v. Roberts*, 175 U. S. 291 (1899). The court there upheld a grant of federal funds by Congress to a District of Columbia hospital that was open to all, but operated by a religious order, under a corporate charter. The court rejected the claim that the grant was an aid to religion in violation of the federal constitution, and ruled that the grant was made

to a corporation which was carrying a public purpose and that the religious motives and relationships of those operating the hospital were immaterial. Shortly following *Bradfield*, the same court in *Speer v. Colbert*, 200 U. S. 130 (1906) refused to consider Georgetown College a "sectarian" institution under the constitution of the state of Maryland, even though it was church-related. While the *Speer* case did not involve the federal constitution, the opinion therein reflected the Supreme Court's approval of the *Bradfield* reasoning with respect to a church-related college. To date, neither of these cases have been overruled by the Supreme Court. They support the view, that a church-related college, which is open to all, and operated to provide education of an approved secular nature, comparable to that provided by non-denominational colleges, may, irrespective of a religious affiliation and the views of its operators, receive government assistance toward its public educational purpose, without infringing the federal constitution.

The latest series of decisions involving the religion clauses, confirm that the First Amendment does not require government and religion to be sealed off from each other's secular activities. *Everson v. Board of Education*, 330 U. S. 1 (1947), upheld the tax paid bus ride for parochial school children, as consistent with government neutrality.

Opponents of government assistance to church-related education are fond of citing out of context, certain expressions from the *Everson* opinion which did not constitute the actual ruling in the case. It remains quite clear, however, that *Everson* did not rule upon public support of church-related education. *Everson* not only upheld publicly paid bus rides on the basis of their "purpose and effect" but cited with approval the prior Supreme Court decision in *Cochran v. Bd. of Education*, 281 U. S. 370 (1930), which upheld free textbook loans by the state of Louisiana to parochial school children, as an aid to a legitimate public educational purpose. The *Cochran* case did not involve the First Amendment religion clauses, but its public purpose, child-benefit theory was apparently considered pertinent by the court majority in *Everson*, which cited the *Cochran* case.

Shortly after *Everson* was decided, the United States Supreme Court rejected the "absolute separation" theory in *Zorach v. Clauson*, 343 U. S. 306 (1951). *Zorach* upheld the state accommodation of its people through dismissed time programs for religious instruction away from the public school. The court there declared (p. 313):

"The First Amendment, however, does not say that in every and all respects there shall be a separation of Church and State. . . . We are a religious people. . . . We find no constitutional requirement which makes it necessary for government to be hostile to religion and to throw its weight against

efforts to widen the effective scope of religious influence."

That the foregoing "accommodation" theory of the federal constitution was not an accident of expression is clear from the cases arising since. In the four Sunday Closing Cases, decided in 1961, the court opinion, in each case, based the decision upon the public "purpose and effect" of the statutes—which is the very ground upon which *Everson* was decided.* The "purpose and effect" standard was further confirmed and elaborated in the latest establishment decision by the Supreme Court, in *Abington School Dist. v. Schempp*, supra, where the opinion stated (p. 222):

"As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the Clause withdraws all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: *What are the purpose and the primary effect of the enactment?* If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause *there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.* (Citations)" (Emphasis supplied)

The only expression of outright opposition to government assistance to church-related education in recent years was made in the concurring opinion of Mr. Justice Douglas in *Engel v. Vitale*, 370 U. S. 421 (1962) wherein the court outlawed nondenominational government sponsored prayer in public schools. No other justice has subscribed to that dicta. Indeed the latest Supreme Court opinion in *Abington School Dist. v. Schempp* adhered to the purpose and effect tests of the *Everson* and Sunday Closing cases. In 1967 the Pennsylvania Supreme Court noted the *Schempp* "purpose and effect" test in upholding the new School Bus Law. See e.g. *Rhoades v. Abington Twp. Sch. Dist.*, 424 Pa. 202 (1967), especially at 228, 246, 247. The *Schempp* test was specifically applied also in *Shuey v. County of Lebanon*, 10 Lebanon 84 (1965).

Thus the federal and state judicial authorities support the public "purpose and effect" standard to mark the permissible limits of government assistance to a church-related educational institution under the federal constitution. The cited cases make clear that incidental or remote potential consequences to religion are not controlling where the primary purpose and effect of the government action is to achieve a proper secular end.

**McGowen v. Maryland*, *Gallagher v. Crown Kasher Super Market*; *Two-Guys from Harrison v. McGinley*; *Braunfeld v. Brown*; all reported in 366 U. S. at 420, 617, 599, and 582 respectively (1961).

"The Plaintiffs do not charge that nonpublic schools would, under Act 91, be the recipient of financial benefits. But even if this were to be an indirect result of the legislation, this fact in itself would not unconstitutionalize the law. In order to come within the constitutional ban, financial benefits accruing to a nonpublic school would have to be direct and not merely incidental, supplemental or peripheral." *Rhoades v. Abington Twp. Sch. Dist.*, supra, p. 220.

"Viewed in terms of hard realities, therefore, it is not the mere benefit to a religion which causes a service provided by government to violate our constitution.

"While a provision . . . benefits church-related institutions may not be for that reason alone unconstitutional, it is clear that . . . there must be some areas and some services which government may not provide . . . the real difficulty is in gleaning . . . the place where the line must be drawn." *Rhoades v. Abington Twp. Sch. Dist.*, supra, p. 231.

"Nor does the fact that these teachers contributed all their earnings beyond their support to the treasury of their order, to be used for religious purposes, have any bearing on the question. It is none of our business, nor that of these appellants, to inquire into this matter. American men and women, of sound mind and twenty-one years of age, can make such disposition of their surplus earnings as suits their own notions. We might as well, so far as any law warranted it, inquire of a lawyer, before admitting him to the bar, what he intended to do with his surplus fees, and make his answer a test of admission. What he did with his money, could in no way affect his right to be sworn as an officer of this court, therefore, it would be impertinence in us to inquire." *Hysong v. School Dist.*, 164 Pa. 629 at 656-657 (1894). See also *Collings v. Lewis*, 25 Dauphin 232, 245 (1923).

Even the much misunderstood recent *Horace Mann* decision in Maryland held that the federal constitution does not per se prohibit state assistance to church-related colleges. In *The Horace Mann League v. Board of Public Works*, 242 Md. 645 (1966), the Maryland Court of Appeals unanimously sustained one of four state laws which provided funds to church-related colleges. The Supreme Court of the United States refused to consider an appeal which plaintiffs took in an attempt to reverse this ruling upholding the grant to the church-related college, 385 U. S. 97 (1966). As to the other statutes, the Maryland Court divided 4 to 3, in nullifying state assistance to three church-related colleges, on the finding by the majority that the religious programming at these three colleges were so substantial that the State aid, in effect, provided an aid to religion. Thus *Horace Mann* did not hold that colleges are barred from state aid under the federal

constitution by reason of their church-relationships. Hood College was admittedly church-related and its grant was upheld. *Horace Mann* held that the level of religious activity at a college may not be so "intense" as to render the aid to religion more than "incidental."

The inner contradiction of the *Horace Mann* decision is seen from the unanimous finding by the same Court that none of the same laws violated the Declaration of Rights of the Maryland Constitution, Article 36 of which prohibits compelled citizen support (by taxes) of any church, ministry or sect. As to Article 36, the Maryland Court held unanimously that all of the educational grants, under long established Maryland decisions were public monies expended for the public purpose of educating Maryland citizens in colleges of their choice, and hence were not aids to religion.

Thus the Maryland Court in *Horace Mann* unanimously recognized, under both the state and federal constitution, that aid to a church-related college is not, as a matter of law, necessarily an unconstitutional aid to religion.

Two quotations from the majority opinion in the *Horace Mann* case establish, beyond doubt, that the Court did not view the federal constitution as barring state grants to church-related schools, to wit:

"We are unable to accept Appellee's contention that every religious observation by an institution sectarianizes the same, but feel that the question of sectarianization depends upon a consideration of the observances, themselves, and the mode, zeal, and frequency with which they are made" (p. 671).

". . . whether or not an educational institution is sectarian in such a legal sense is a rather elusive matter, being somewhat ephemeral in nature. Hence, we have deliberately made no attempt to enunciate a hard, fast, and intractable rule in regard thereto, preferring, as indicated above, to decide each case upon the totality of its attendant circumstances" (p. 678).

The confusion in the *Horace Mann* case arises from the Court's contradictory findings as to the primary effect of the state grants. Under the state constitution the court found a sufficient public purpose and secular effect. Under the federal constitution, four out of seven judges found the same were too religious.

Even as so limited, the status of the *Horace Mann* majority opinion on the federal issue was further attenuated, within three weeks, in another opinion by the Maryland court. In *Truitt v. Board of Public Works*, 243 Md. 375 (1966) which unanimously upheld state grants to church-related hospitals, the concurring opinion of Judge Barnes made it clear that the 4/3 court majority in *Horace Mann* was composed of two trial judges specially assigned to replace two appellate judges who disqualified themselves in *Horace Mann*; and that Judge Barnes, one of the disqualified judges, neither approved nor felt bound by the *Horace Mann*

method of disqualifying church-related colleges under federal constitution. See *Truitt v. Board of Public Works*, supra, p. 411, 413.

The narrow ruling in *Horace Mann* under the federal constitution is confirmed by the actions of Congress in enacting as of November 3, 1966 a series of amendments to extend and expand the operation of the Higher Educational Facilities Act of 1963, the Higher Education Act of 1965, and the National Defense Education Act of 1958 (11 U. S. Cong. and Administrative news 1966, pp. 4706, 5151). Opponents to such legislation appeared before the Senate Subcommittee Hearings of the Higher Education Amendments of 1966 and placed the entire *Horace Mann* opinion in the record arguing their interpretation that *Horace Mann* outlawed such aid (Hearings, Higher Education Amendments of 1966; U. S. Senate Subcommittee on Education, 89th Cong. 2d. Sess., p. 209). Congress rejected this erroneous interpretation and enacted the new educational assistance laws, which benefit church-related as well as nondenominational colleges.

3. Other Authority

a. LEGISLATIVE JUDGMENT

In passing upon the validity of statutes, courts freely acknowledge that the actions of the legislative branch are entitled to consideration and respect, for the obvious reason that legislators are also obliged by their oath of office to uphold the constitution of the United States. The members of Congress are, in large part, familiar with constitutional questions, and many are distinguished students of constitutional law. After much debate and extensive hearings concerning the constitutionality of proposed federal educational aid, including church-related colleges, they have enacted varied and massive forms of aid to church-related colleges over the past twenty years. Particular attention is invited to Appendix V hereto which lists the wide range of higher educational assistance programs enacted by the federal government, and obviously deemed valid under the federal constitution. The conclusion is unavoidable therefore that most Congressmen, including former Governor Scranton,* consider aid to church-related colleges, in forms that advance a public purpose and primary secular effect, as not infringing any part of the federal constitution. This prevailing legislative opinion is strengthened by the utter lack of any attempt to challenge any one of the federal educational assistance laws or grants relating to church-affiliated colleges.

The participation of Pennsylvania, through its Officers, the State Commission on Academic Facilities, and other educational agencies of the State, in the federal

*"While in Congress, I have done everything possible to produce federal assistance for higher education." Address by William W. Scranton, Republican Candidate for Governor, before the Governor's Committee of 100 for Better Education, October 10, 1962.

aid programs involving church-related colleges reflect agreement by the state administration and officials with the views of Congress. Were the federal grants deemed to violate the federal constitution, the question would have been at least raised, if not resolved at the state level. If such federal grants are, in the opinion of so many responsible public officials valid, state grants of like nature and scope, could hardly be considered, under the same federal constitution, any less constitutional.

b. EXECUTIVE JUDGMENT

What has been said above concerning the judgment and responsibility of the legislators involved in the passage and administration of government grants to church-related institutions, apply as well to their chief executive officers of the nation and the commonwealth. President John F. Kennedy, who opposed "across the board" aid to church-related schools at the parochial level, sponsored government aid to all colleges and universities. So did President Lyndon B. Johnson. Similarly, William W. Scranton, as Governor, played a vigorous role in carrying forward federal aid programs involving church-related schools, through his late administration. The judgment of the executive heads of government, who are also oath-bound to support the federal constitution, further re-enforces the conclusion that such laws are indeed constitutional.

c. SCHOLARLY OPINION

While no scholar can, in the absence of a controlling decision, venture an absolute prediction of future decisions by the Supreme Court, several prominent constitutional law scholars, who are not identified with partisan interest groups, have noted that: (a) There is no clear constitutional barrier to aid to church-related higher education, if properly formulated. See e.g. the recorded opinions rendered upon invitation by the late Professor Howe (Harvard University Law School), Professor Southerland (Harvard University Law School), Professor Katz (University of Wisconsin Law School) to the U. S. Senate Subcommittee on Education. U. S. Sen. Doc. 29, 87th Cong., 1st Sess. 50 (1961). More recently Professor Kurland (University of Chicago Law School) reiterated his position that such aid would be constitutional. Kurland, *Politics and the Constitution, Federal Aid to Parochial School*, Land and Water Review 475, 493, 494 (1966). Professor Kauper (University of Michigan Law School), who doubts the validity of direct government assistance to church-related schools at the elementary level, has also indicated substantial bases for upholding such aid to church-related colleges, especially when cast into the form of program assistance in the public interest, as defined by the government. Kauper, *Religion and the Constitution*, 112, 113 (1964). See also Katz, *Religion and the American Constitution*, 72 et seq. (1963).

4. Conclusion

On the foregoing considerations, state financial assistance to church-related colleges and universities, for secular educational purposes to meet critical public needs would not raise clear violation of the federal constitution. This conclusion also makes good sense in furthering the declared policies of the Master Plan to expand educational resources and use them fully, at optimum taxpayer cost, with freedom of students to choose their college. Ever were there reasonable doubts for conflicting interpretations of the constitution and the cases thereunder, such doubts would normally incline to favor that interpretation which supports common sense and demonstrated social needs. There is, therefore, no substantial reason under the federal constitution for refusing to pursue beneficial legislation to enable church-related colleges to achieve the secular educational goals set for them by the Master Plan.

C. THE PENNSYLVANIA CONSTITUTION

1. Text and Theory

The following portions of the Pennsylvania Constitution relate to the questions here considered:

Article I, Section 3—Right of conscience; freedom of religious worship . . . no man can of right be compelled to attend, erect or support any place of worship or to maintain any ministry against his consent; . . . and no preference shall ever be given by law to any religious establishment or modes of worship.

Article III, Section 17—Appropriations to charitable and educational institutions—no appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools . . . except by a vote of two-thirds of all the members elected to each House.

Article III, Section 18—Certain appropriations forbidden—No appropriation shall be made for charitable, educational or benevolent purposes to any person or community nor to any denominational or sectarian institution, corporation or association: Provided that appropriations may be made . . . in the form of scholarship grants or loans for higher educational purposes to residents of the Commonwealth except . . . to persons enrolled in a theological seminary. . . .

Of the relatively few cases under Article I, Section 3, only a few very recent decisions need be cited, as this Article is not particularly germane to the issue of state assistance to church-related higher education. To quote the late Attorney General, The Honorable Walter Alessandroni, from his brief to the Pennsylvania Supreme Court in *Rhoades v. Abington Twp. Sch. Dist.* 424 Pa. 202 (1967):

"The terms, 'place of worship,' 'ministry,' and 'preference . . . to any religious establishments,' as used in the third section of Article I, have never been construed by the courts of Pennsylvania. This has very likely been due to the fact that their meanings are so plain. . . .

* * *

"It is obvious that any of these alleged violations by the Act of Article I, Section 3, would also constitute violations of the disestablishment clause of the Federal Constitution.

* * *

". . . While interpretation of the Pennsylvania Constitution rests finally with the Supreme Court of Pennsylvania, the reasoning of the Supreme Court of the United States with respect to the concept of 'establishments' (including specific features thereof, such as support of places for worship or a ministry) would appear basic with respect to the language of Article I, Section 3. See also *Shuey v. County of Lebanon, supra.*" (Brief for Commonwealth of Pa., pp. 34-37)

In the opinion rendered for the Supreme Court, in response to the quoted brief, Mr. Justice Musmanno, with respect to Article I, Section 3, declared:

"Supporting a place of worship meant providing funds for the maintenance of a church." (*Rhoades v. Abington Twp. Sch. Dist.*, *supra*, p. 219)

It is clear that aid to church-related colleges would not be supporting a "place of worship" or maintaining any "ministry" nor effecting any "preference." To classify accredited, degree granting, church-related colleges, which are open to students of all faiths, and staffed by members of different faiths, and where both students and faculties have achieved the intellectual maturity and independence to think for themselves; to classify such institutions of higher learning as places of worship or ministries would be a gross distortion of factual reality, as well as of constitutional intent. As shown by the above quotation from the Attorney General's brief, Article I, Section 3 has never been seriously considered a ground to nullify state aid to church-related colleges. In the series of cases wherein the Pennsylvania Supreme Court did nullify unrestricted institutional grants, as hereafter discussed, the Court relied upon Article III, Section 18, and did not even mention Article I, Section 3, so clear is the language from the latter Article which, neither in its literal terms nor its purpose, has been considered to affect educational subsidies.

The plaintiffs in the recent *Horace Mann* case, above discussed, attempted to stretch language like that in Article I, Section 3 (which closely parallels that of Article 36 of the Maryland Declaration of Rights) to cover state grants to higher education. Article 36 is so close in its wording to Article I, Section 3 of the Pennsylvania Constitution, that for practical purposes, it may be considered as identical. It reads:

"... nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry" (Article 36, Declaration of Rights, Maryland Constitution).

The Maryland Court of Appeals *unanimously* held that state grants to church-related colleges did not violate the quoted Article:

"Thus it is seen that grants to educational institutions at a level where the state has not attempted to provide universal educational facilities for its citizens have *never*, in Maryland, been held to be impermissible under Article 36, even though the institution may be under the control of a religious order. And we see no reason to hold otherwise now. We, therefore, hold that *none* of the grants violate Article 36." (*Horace Mann*, *supra*, p. 690) (Emphasis supplied)

Thus, in effect, though without specific reference to or acknowledgment of the United States Supreme Court test, the Maryland Court recognized that a state grant whose purpose and effect is educational advancement cannot be stretched into an aid to a ministry or place of worship, merely because of church relationships to accredited colleges.

With respect to Article I, Section 3 of the Pennsylvania Constitution, as with respect to Article 36 of the Maryland Constitution, it has never been held to bar state assistance to church-related institutions, and there is no good reason to now consider it as such a bar.

Article III, Section 17 is relevant only to the extent of its requirement that state appropriations to "any charitable or educational institution not under the absolute control of the Commonwealth" be made by affirmative vote of $\frac{2}{3}$ of the members of each house of the State Legislature. This stringent requirement of an absolute two-thirds majority in each house to constitutionally validate state *appropriations* to any colleges and universities, other than state colleges (which are the only ones under the absolute control of the Commonwealth) draws no distinction between the types of state-related, state-aided, and private institutions. There is no reported case, which challenged a state appropriation to a college under Article III, Section 17. It must therefore be assumed (though not known) that every Pennsylvania legislative appropriation to higher education institutions (other than state colleges) has been made by the requisite two-thirds majority in each house, as this constitutional mandate cannot be legally avoided by any special procedure or rules of either house regarding "general" or "special" appropriations.

Article III, Section 18 of the Pennsylvania Constitution bears directly upon the power of the state to aid denominational colleges and universities. It is important, therefore, to consider carefully both the actual

terms of this Article, as well as the decisions of the Pennsylvania Supreme Court which interpret the same.

Major stress must be placed upon the judicially established scope and limit of operation of Article III, Section 18, to wit:

- a) Section 18 applies only to "appropriations" and not to all forms of publicly sponsored financial assistance. Many funds which may be deemed "public funds" are not "appropriations" within the meaning of Section 18.
- b) Section 18 prohibits institutional grants only for the purpose therein proscribed. It does not prevent the State from having certain reimbursement relations with private institutions, even through appropriation funds. The proper areas for such public subsidy are a matter of definition, as hereafter discussed.
- c) The constitutional meaning of the terms "charitable, educational or benevolent purposes" has been and will continue to be modified by judicial interpretation, according to the basic constitutional purpose, in the light of social change and necessity. This results from expanded welfare and police power activity by the state in areas previously left to individual responsibility.

Thus, if financial assistance is generated by the State to higher education through non-tax funds or through financing which does not involve the obligation or credit of the State, Article III, Section 18 has no application, irrespective of the nature of the assistance program. Further, if the assistance program is not concerned with grants for construction of capital facilities, but covers specialized program activities to meet critical public shortages and needs, the State may arrange for the production of such needs through reimbursement arrangements with private institutions, including church-related institutions. Such subsidies would not constitute appropriations to the institution within Article III. Finally, where subsidies are paid to the institution, merely as a conduit, for actual distribution and consumption on a state defined basis, by faculty and student trainees and researchers, even if made from appropriated funds, such form of assistance does not constitute appropriations to the institution under Article III, Section 18. Nor does it constitute assistance to a special group, where all Pennsylvania residents in all colleges are qualified to engage in such programs. That is to say, the State may, where reasonably necessary, employ private, even church-related, institutions to achieve certain types of welfare objectives in the nature of student and faculty services, facilities, and training. These conclusions are borne out by the following analyses of the Pennsylvania Supreme Court decisions relating to Article III, Section 18.

2. Judicial Authority

Those Pennsylvania cases, the latest of which was decided in 1932, which nullified grants to church-

related colleges pertained solely to general, *unrestricted* institutional grants.

Collins v. Kephart, 271 Pa. 428 (1921);
Duquesne v. Lewis, 26 Dauphin 242 (1923);
Collins v. Martin, 290 Pa. 388 (1927);
Collins v. Martin, 302 Pa. 144 (1931);
Constitutional Defense League v. Waters, 308 Pa. 150 (1932).

The narrow interpretation given to Article III, Section 18 by the above cases, was also applied in other cases to nullify the state's attempts to alleviate poverty conditions. *Busser v. Snyder*, 282 Pa. 440 (1925). The Court, however, later redirected its interpretation of Article III, Section 18, as regards poverty, to uphold State appropriations on the ground that they involved performance of obligatory public functions. *Commonwealth ex rel Schnader v. Liveright*, 308 Pa. 35 (1932). The technical grounds by which *Liveright* avoided *Busser*, was not entirely convincing to later justices. See e.g., *Commonwealth v. Perkins* 342 Pa. 529 (1941 at 534, 535). This shift in constitutional interpretation, as to what constitutes performance of a public function, as against a public grant of charity or benevolence, is here noted to illustrate the necessity for realistic interpretation of old constitutional provisions which did not contemplate or necessarily intend to define rigidly the proper scope of government welfare activities. That such an evolution of law is equally necessary to government for welfare needs that arise in the context of an educational program is exemplified by the recent extension of school health services to children in church-related institutions. The attorney general held such benefits to be a proper and constitutional exercise of government welfare power. *School Health Services*, 28 D & C 2d 776; *Attorney General's Opinion* 257 (1963). The same position is apposite to state provision of college facilities and services, as hereinafter discussed.

Just as older cases under Article III, Section 18 were modified with respect to state assistance to the poor, they also gave way in later cases, to a modern interpretation as to what constitutes an "appropriation" to an institution. Following the pupil-benefit theory of the United States Supreme Court opinion in *Cochran* (which upheld loan of text books by the state to parochial school children), the Pennsylvania Supreme Court in 1956 held that payments by a state agency to a denominational orphanage for the care of a juvenile ward, did not constitute an appropriation to the institution, but a payment in reimbursement for care of the child, and as such, an appropriation for welfare benefits. *Schade v. Allegheny Institution Dist.*, 386 Pa. 507 (1956). The importance of the *Schade* rationale, to a modern and realistic treatment of state grants for special purpose programs to higher educational institutions, as hereafter discussed, is highlighted in the following quotation from that opinion (p. 512).

"The Constitution does not prohibit the State or any of its agencies from doing business with denominational or sectarian institutions, nor from paying just debts to them when incurred at its direction or with its approval. Numerous cases can be readily visualized where such situations have occurred: i.e. payment of the bill of an injured employee to a sectarian hospital."

Thus a state subsidy, whether for designated research activity, training in acutely needed professions or technical skills, or community service, should, under an enlightened view, such as that above expressed in *Schade*, be treated as reimbursement of services, wherein the beneficiary of public funds are citizens and the community, not the servicing institution which is providing the required services.

While the *Liveright* and *Schade* cases established judicial justification for special purpose activities grants to denominational institutions, they do not constitute direct authority to provide financial assistance for the construction of permanent facilities at church-related institutions. This latter form of aid is in a different constitutional category than programmatic aid, and, under the older cases, constitutional problems remain if aid is attempted by way of "appropriations." Accordingly, capital facilities assistance to church-related institutions should be pursued through channels other than "appropriations" until a more enlightened position is effected by constitutional revision or judicial modification of the early decisions. That such channels exist is clear from the following decisions of the Pennsylvania Court:

Kelley v. Earle, 325 Pa. 337 (1937);
Commonwealth v. Perkins, 342 Pa. 529 (1941);
Dufour v. Maize, 358 Pa. 309 (1948);
Heuchert v. State Harness Racing Commission, 403 Pa. 440 (1961).

The *Kelley* case upheld the General State Authority Act of 1935 against the charge that it violated Pennsylvania's Constitution. The court emphasized that the statutory creation of an Authority to finance projects exclusively from public borrowings without the use of "appropriations" or of state credit did not violate the ban on pledging of state credit. And while *Kelley* involves the credit limitations of the constitution, its rationale of necessity applies to Article III, Section 18, as no state appropriations are required for Authority operations. Indeed, the states of New York, New Jersey, and Connecticut, which also have constitutional restrictions against aid to sectarian institutions, have successfully adopted the statutory authority as a constitutional means to expand educational facilities at all colleges and universities. Those statutes are cited in Part IV-B following.

Independent of Authority borrowing from the general public, other channels of public assistance are available to church-related colleges. Not all public

funds, even tax funds, are "appropriations" within the decided meaning of the Pennsylvania constitution. The Pennsylvania cases above cited (other than *Kelley*) upheld the statutory creation and distribution of special purpose impositions, without such funds ever being paid into the state treasury. Only funds drawn from the state treasury were, in such cases, deemed "appropriations."

In the *Perkins* case the Pennsylvania Unemployment Compensation Law was attacked as a violation of Article III, Section 18, as an appropriation for charitable or benevolent purpose. The Supreme Court, on the opinion of the trial court, sustained the Act because the statute-created fund went directly into the Statutory Unemployment Compensation Fund:

"As we understand the word 'appropriation,' when used in the constitutional or legislative sense, it means a designation of money raised by taxation to be withdrawn from the public treasury for a specially designated purpose. The money in question raised by taxation under this statute never gets into the state treasury. It is paid into the Unemployment Compensation Fund created under the Act. . . . The process does not have the earmarks of an appropriation of public monies as generally understood. (Emphasis supplied)

". . . it might seem to be juggling with terms to say . . . that the money so raised, merely because of the method of its treatment when raised, is not public money. Yet that is precisely the trend of the modern decisions." *Commonwealth v. Perkins*, supra, at 532, 533.

The *Perkins* case cannot be considered an odd evasion of constitutional limitations. The Pennsylvania Supreme Court had previously so indicated:

"The fact that the proposed plan might be deemed an evasion of the constitution, would not condemn it unless evasion was illegal. 'It is never an illegal evasion to accomplish a desired result, lawful in itself, by discovering a legal way to do it.' *Tranter v. Allegheny Authority*, supra at p. 84." *Kelley v. Earle*, supra, at 351.

In the later *Dufour* case, the Supreme Court held that collections and dispositions of license fees and bond forfeitures under the Bituminous Coal Act were not subject to the restrictions of Article III, Section 18, on the reasoning of the *Perkins* case, and also a much earlier decision:

"This disposition of the funds received in administering the Act is not an appropriation within the meaning of Article III, Section 18. In *Commonwealth ex rel. Bell v. Powell*, 249 Pa. 144, 94 A. 746, it was contended that the disposition of motor vehicle registration and license fees pursuant to the Act of July 7, 1913, P. L. 672, was an appropriation within Article III, Section 18, but the contention was rejected. What was then said of that disposi-

tion of the registration and license fees is applicable now. *It (the same constitutional provision) has no application to a fund created for a special purpose and dedicated by the act under which such fund is to be created to a particular use.* The appropriation of the Fund so created continues so long as the act which dedicates it to a particular use remains in force (249 Pa. at 154). See, also, *Com. v. Perkins*, 342 Pa. 529, 553, 21 A. 2d 45." *Dufour v. Maise*, supra, 318. (Emphasis supplied)

The Supreme Court recently confirmed these decisions classifying the collection and disposition of statutory fees which do not pass through the state treasury. In *Heuchert*, the State Harness Racing Act of 1959 was sustained against direct attack under Article III, Section 18. The Act imposed a 5% tax on Harness Race admissions and a 5% tax upon the amounts wagered through pari-mutual betting, and directed that 25% of the net receipts from said exactions be paid into the "Pennsylvania Fair Fund" to be distributed annually in specified amounts by the Secretary of Agriculture to county agricultural societies conducting annual fairs or horse races. Said collections and distributions were held not to be "appropriations."

"It is our opinion that this is not an appropriation within the meaning of the constitution and that our Supreme Court has already established an equivalent precedent (citing *Dufour*)."
Heuchert v. State Harness Racing Comm., supra, at 448.

The foregoing line of cases settles the state's power to raise by statutory imposition, special purpose funds for direct distribution without requiring any "appropriations" within the meaning of Article III, Section 18. The Commonwealth, if it so wills, may thus benefit all private higher educational institutions by the methods sustained in the reported cases. To the extent that such assistance is confined to buildings which, by law, may not be employed for religious activities or sectarian purposes, there is no involvement of the state's power to aid religion, but a legitimate exercise of state power to provide necessary educational facilities and opportunities for its citizens.

Repeated declarations that the state's higher educational institutions are indispensable to the maintenance of a healthy economy and healthy citizenry provide ample justification for creating and assigning special statutory collections to a special fund to be administered by a Higher Education Authority. Whether the statutory source is business license fees and forfeitures, or a portion of the receipts from the State Harness Racing Law, or any other forms of special revenue which do not reach the state treasury, the end beneficial result is the same.

3. Special Purpose Facilities Assistance

a. NON-TAX FUNDS

The foregoing analysis establishes the constitutionality of legislation creating an authority with power

to finance on public tax exempt borrowings, without obligation to the state, educational projects required for the common good. A detailed discussion of the positive benefits of such an authority is deferred to the following Section IV on Legislative Proposals. As above noted, the Pennsylvania General State Authority is not unique. Special educational facilities authorities have been legislated in the neighboring states of New York, New Jersey and Connecticut without any legal difficulty. The New York constitution concerning public grants to denominational institutions is even more restrictive than the Pennsylvania constitution, but as noted in the *Kelley* case, supra, authority financing is a proper method of avoiding constitutional limitations.

To quote a New York court:

"The very purpose of the Dormitory Authority is to free such projects from the restraints otherwise applicable to state government." *Windalume Corp. v. Rogers & Haggerty, Inc.*, 234 N. Y. S. 2d 112 (1962)

Such an agency, which is not a mere arm of government, could also receive private contributions for use in its public benefit projects, including those provided at church-related institutions. The long series of litigation in Pennsylvania involving the use of public agencies, under terms stipulated by the will of Stephen Girard, for the service of the community, and the progeny of those cases, make it clear that not every unit created by the state is subject to the technical limitations on "appropriations" of monies from the state fund.

b. TAX FUNDS

Whether tax funds may be used for the provision of sorely needed academic facilities at private institutions depends upon the legislative manner in which they are raised and directed to such projects. If such

funds are paid into the state treasury and appropriated therefrom by specific legislative action, to church-related institutions, they would be subject to serious challenge under Article III, Section 18. If, however, such funds are raised by special statutory collections under an act which dedicates such collections to a special purpose fund, without passing through the state treasury, then such revenues, if expended for a primary secular purpose, even at church-related institutions, with restriction against the use of such facilities for religious activities or sectarian purposes, would not be governed by Article III, Section 18 under the prevailing Pennsylvania decisions.

Thus formulated, even direct payment of public funds could be made to educational projects. In this respect, the federal Higher Education Facilities Act of 1963 provides a model to achieve the desired educational result.

4. Assistance Toward Performing Special Programs of Critical Public Need

a. NON-TAX FUNDS

What has been said under sub-section 3-a above applies equally to educational assistance for special programs and activities.

b. TAX FUNDS

What has been said in sub-section 3-b above would apply equally to programmatic assistance. Further, it would appear that, under the reasoning of the *Schade* case (see Part III—C (2) above), the Commonwealth could, in addition, "appropriate" funds directly from the state treasury in payment or reimbursement of requested public-interest educational services. Article III, Section 18 does not prohibit the state from "doing business" with any institution, to achieve a secular purpose.

IV

Legislative Proposals

A. PREMISES COMMON TO ALL PROPOSALS

Each of the following proposals is submitted on the following general premises:

a) To achieve maximum return on invested public funds, the state should, wherever feasible, prefer a loan rather than grant method of assistance. There is little justification to drain limited state revenues in self supporting projects, viz. student housing.

b) Since 100% private financing is not always possible, the state should provide where possible, supplementary funding sources to encourage optimum pay-as-you-go financing. Such aids should be allocated by a responsible educational agency according to the public needs, goals and financial capacity of the applicant institutions.

c) To the extent possible, the state should, through authority legislation, seek to exploit the immeasurable greater quantity of funds in the money market and reserve the limited state revenues to extended use on other educational projects. The authority powers of raising long-term, low-interest, tax-free borrowings, for capital facilities expansion, should be invested in a Higher Educational Facilities Authority, for the exclusive purposes of higher educational advancement for the following reasons.

An Educational Authority should include officers of the state educational agencies and of the colleges and universities in the state to insure intelligent correlation of authority function to ongoing state educational policy.

If authorized to receive industrial, corporate and individual gifts to assist higher education generally, such an authority, acting as a trustee, would be further enabled to complete otherwise difficult financing arrangements for many of the state's institutions. It may be anticipated that educational contributions to an Educational Authority, serving all the institutions in the state, will be stimulated to a higher level and degree, than presently exists on the basis of grants to selected institutions. This united fund approach to higher education is worthy of consideration.

The presence of seasoned educational administrators and officials on such a specialized authority might well make it especially attractive for badly needed private support.

d) Matching grant requirements are often self-defeating, delusive and useless to the most needful institutions. Accordingly, the matching grant device should

not be favored as an absolute prerequisite (as it presently is done by the Master Plan).

e) The administration of non-authority grants and loans, whether for facilities or program assistance, as vested in appropriate state agencies, such as the State Commission on Academic Facilities and a State Higher Educational Agency, should be placed under the overall direction of the State Council on Higher Education.

f) Other than appropriations made to state colleges, community colleges and universities within the Commonwealth system, higher educational financial assistance laws should dedicate a general sum for the entire higher educational community, to be allocated and distributed under general legislative standards, among the colleges qualified to participate therein, at the discretion of a continuing educational assistance agency, and according to prevailing circumstances and needs. Only in this way can beneficiary institutions under such programs avoid the pressure and necessity of unilateral lobbying in each session of the legislature.

g) Where direct institutional appropriations for capital facilities present constitutional questions, such assistance should be pursued by other means, i.e. from non-appropriations revenue sources.

h) Where capital and academic facilities are involved, they should be legislatively defined and restricted in purpose and use, in the manner employed by Congress in the Higher Educational Facilities Act and by the Higher Educational Facilities Authority Acts in New Jersey and other states. This avoids any question of aiding religion or sect by prohibiting use of such facilities for religious or sectarian activities.

i) In terms of educational priorities, the first priority to state financial assistance should cover undergraduate enrollment to graduate training programs. Studies toward master's degrees should enjoy equal priority with the terminal phase of doctoral degrees.

j) The expansion of academic facilities and equipment will generate very substantial benefits to the economy of the state in the building industry, the construction trades, and local industries engaged in the processing and installation of educational equipment and materials.

k) The proposed legislation may assure maximum utilization of federal funds by Pennsylvania institutions. Private institutions may otherwise be unable to meet federal "matching" requirements.

B. SPECIAL PURPOSE FACILITIES, EQUIPMENT AND MATERIALS

1. Instructional Facilities

Legislation to create a Higher Educational Assistance Authority, on the models of New York, New Jersey and Connecticut laws (see e.g. *Dormitory Authority Act*, N.Y., L. 1944, c. 524, sec. 1 et seq.; 42 McKinney's Cons. Laws N.Y., Part 2, 1675-1690; *Connecticut Educational Facilities Authority Act*, 1965 P.A. 170, sec. 1 et seq.; 10 Conn. Gen. Stat. Ann. 10-335 et seq.; *New Jersey Educational Facilities Authority Act*, L. 1966 c. 106, sec. 1 et seq.; 18 N.J.S.A. 22B-1 et seq. Any such law should include, as in the foregoing acts, specific legislative findings of the public need, emergency, and severe shortage of resources prevailing in higher education in the state. Excerpts of such legislative findings, which comport with the findings of the Pennsylvania Master Plan, are attached hereto as Appendix VII.

The experience of the New York Dormitory Authority (which, despite its name, finances besides dormitories, all manner of capital facilities, academic equipment, instructional materials, and furnishings related thereto) is a striking success story. The current building program of that authority exceeds \$512 millions; its completed projects exceed \$184.4 million; its projects at state institutions exceed \$148.8 million; and its projects at private institutions, including church-related institutions, are as follows:

Projects completed	\$ 32.6 million
Projects building	78.7 million
Projects in planning	269.7 million

(See Appendix hereto, and New York Dorm. Authority Annual Report 1964-65, pp. 6, 7, 12.)

Such achievements far exceed the financial limits of the programs heretofore followed in Pennsylvania; they outstrip the limited revenue resources that are available; they demonstrate the practicality of a much bolder and higher level of development than that proposed in the Master Plan.

Because the Pennsylvania General State Authority is oriented to activities other than special educational assistance, and is already burdened with massive and multiform obligations, and because of factors hereafter presented, it is recommended that the Commonwealth create a separate Higher Educational Assistance Authority, with power, in addition to the standard powers and limitations incident to such an authority, as exemplified by the New York and New Jersey laws, *supra*:

a. to receive grants and loans from private individuals, associations, industrial and community groups for general or restricted educational assistance purposes. As noted in section IV-A-c above, such an authority may attract sizeable private support for its projects;

b. to receive, under legislatively stipulated terms, revenues that are not "appropriations," i.e. from special statutory excises and assessments which, by such statutes are paid directly into the educational assistance fund of the authority in the manner sanctioned by the Pennsylvania Supreme Court (Perkins, Bell, Dufour and Heuchert cases, *supra*);

c. to employ its powers of financing and grants through the above mentioned funds a range of educational facilities project as broad in scope as that heretofore practiced by the New York Dormitory Authority.

Supplementary legislation to provide some public funding to the recommended authority is probably necessary. Not all projects are capable of 100% financing. Most institutions lack the "down payment," "swing money" or current income to carry the full debt service for the greatly expanded facilities that are required. In the same manner as the Commonwealth has laudably supported agricultural fairs and horse races, under the Harness Racing Law, it could allocate 50% of such receipts to the proposed Higher Educational Assistance Authority. In its present plight, higher education is in no better position than other supported activities.

2. Instructional Equipment and Materials

The facilities assistance recommendations of the Master Plan are limited to instructional facilities. Quality education in this age requires more than classroom space, and exclusion of assistance of equally necessary equipment and materials defeats the Plan's goals of high quality as well as quantity output. The foregoing New York experience, and the federal stress on all "academic facilities" which Congress defined to include equipment and related materials, evidence not only the need but the practicality of such assistance. Inclusion of such assistance in the activities of the proposed authority would stimulate all institutions to upgrade the quality of their educational plant.

3. Student Services and Facilities

A necessary part of facilities expansion to meet the mounting enrollment are student service facilities, such as medical service equipment, student housing and union buildings, dining quarters, parking facilities, and facilities for student counselling and physical fitness. All of these are broadly subsidized in the publicly aided institutions in the interest of student-citizen welfare, as well as educational needs of the students. They should be available to all students in all institutions; and under the proposal made hereinabove, there is no reason in law why such facilities should not be provided under a state plan. Such facilities can be provided through the proposed Educational Facilities Authority. Student services should be subsidized by

appropriate state special purpose grants for student health and welfare, as discussed in Section C following.

4. Inter-Institutional Facilities

The Master Plan sets forth as one of its goals co-operative arrangements among higher educational institutions. (MP 2). This should necessarily include the sharing of state subsidized facilities which are too specialized and expensive to be obtained at private expense, but which offer great educational potential for special purposes to students, teachers and researchers in all schools. The Master Plan fails, however, to propose a specific form of legislative implementation of this laudable aim to obtain maximum return on state investment in expensive facilities. It is here proposed that the Commonwealth, by specific legislation, adopt the policy that state subsidies which are employed in whole or in part for the installation of such expensive equipment as that employed in the physical and engineering sciences, carry with it the condition that other accredited institutions within a given geographical area have the right to avail themselves of such equipment in a manner not inconsistent with its employment by the host institution. Other necessary and even more important forms of inter-institutional cooperation can be best stimulated on a voluntary basis under a general policy administered by the State Council of Higher Education.

C. SPECIAL PURPOSE PROGRAMS

1. Incentives to College Teaching

It is recommended that legislation to provide incentives to prospective college teachers be enacted in the form recommended by the Master Plan, (MP 38) but in a much higher amount of appropriation than that \$4 million recommended thereby (MP 38). The Plan records the need for 27,000 new college teachers in the current decade, to serve all Pennsylvanians (MP 1), but recommends for all 140 institutions less than half the amount which it recommends for doctoral institutional subsidies, \$8.9 million (MP 41, 42) which sum will serve only a handful of scholars and be paid to a handful of institutions. See Appendix VIII hereto. Without in any way questioning the soundness of the doctoral program, it would appear that the teaching needs of all college students in all institutions merit a better priority and dollar position than that presented by the Plan. This is especially true in light of the fact that the beneficiary institutions under the said doctoral program are already subsidized by the state. Accordingly, the legislature is requested to at least double the recommended appropriation for college teaching incentives.

2. Fellowships

It is recommended that the legislature implement a graduate study assistance program that benefits all

levels of graduate study and not the doctoral level exclusively, as recommended by the Plan. The acute public need for specialists in many fields which are provided by studies toward Master's degrees cannot be overlooked. Nor can the equity be blinked that many candidates for doctoral degrees are already receiving higher professional income than other graduate students. To achieve more doctorates, further, it is just as necessary to encourage study toward the prerequisite intermediate Master's Degree.

The legislature is, therefore, requested to adopt a balanced graduate study assistance program, such as that provided by the state of New York, as explained in the official circular which is attached hereto as Appendix IV; and to which specific attention is invited. A balanced program will not only extend the benefits of state assistance to a wider, more needful citizen group; it will enable all institutions to participate in the advancement of graduate study below the doctoral level.

For well known reasons, the ability to mount doctoral programs is still largely concentrated in a small group of institutions. The acute need for specialists in teaching, nursing, public health, library science, and social services cannot be met by doctoral programs. In the public interest, these graduate programs merit greater support.

3. Special Training and Community Service Programs

Special training programs, as pursued by the federal programs listed in Appendix V hereto, are not specifically recommended by the Master Plan. It is here proposed that implementation of the Master Plan include special provision for Commonwealth assistance to all institutions pursuing officially prescribed programs of research, training and education in fields of special public need, as defined from time to time by the State Council on Higher Education. Without such assistance the majority of Pennsylvania institutions will not be fulfilling to full potential their proper service role to their surrounding communities.

4. Student Services

As noted in Section IV B-3 above, the full and proper level of student services, especially in the field of health and counseling is covered by operational subsidies to state-aided institutions. In the face of increasing student enrollments, these may not be available at non-aided institutions, without adequate state assistance. The Commonwealth has already adopted a policy of assuring proper student health services to students in all elementary and high schools, without constitutional difficulty or challenge. (See School Health Services 28 D & C 2nd 766.) Such citizen benefits should also be made available to all students in higher education by appropriate special purpose state support to be used solely for such services.

D. A PROPOSED ACT OF LEGISLATION

The only specimen of legislation advanced by this statement is a proposed bill to create a Pennsylvania Higher Educational Facilities Authority. This bill, which is attached hereto as Appendix XI, is limited to educational facilities expansion and does not embrace many of the service and programmatic assistance proposals above mentioned. It is intended to be

sufficiently flexible and broad to permit supplemental legislation to improve the effectiveness of the Authority by supplemental functions and supplemental revenue sources other than appropriations. The proposed bill follows the general pattern of educational authority legislation which has been successfully enacted and implemented in New York, New Jersey and Connecticut.

V

Economic and Social Bases for Proposed State Assistance

A. ECONOMIES TO THE STATE AND ITS TAXPAYERS

The recent action of the New York State administration and of the United States Chamber of Commerce Task Force on Economic Growth, as reported herein, serve to demonstrate that optimum return on state assistance requires expanded assistance to private and church-related institutions. It is obvious that educational subsidy costs will be much higher in fully subsidized institutions than in those which through private enterprise and support require only partial educational subsidies.

Pennsylvania can learn much from New York, which is so like to it in its economic and social make-up; its tradition of private colleges and their absorption of almost half of the total state college enrollment. The reports of New York officials on the economic bases for state assistance speak for themselves:

1966 Progress Report of the Board of Regents on the Regents State Wide Plan: For the Expansion and Development of Higher Education—"Last year these (private) institutions enrolled about 54% of the full time students in this state. . . . *Without the private colleges*, not only would the cost to the taxpayer of higher education in New York be doubled, but the rich diversity . . . of these colleges would be lost" (p. 2). "Cooperative planning must be expressed as a continuing process aimed at . . . economical development of all segments of higher education in the state, both public and private, recognizing that their successful interaction . . . is a public resource.

* * *

"The problems of finance described in the preceding paragraph . . . underscore the importance of Governor Rockefeller's proposal that there be established a select committee to study the needs of our private colleges and universities" (p. 14). (Emphasis supplied)

Statement of Governor Rockefeller 1966—"The enrollment of our State University has nearly tripled in the past eight years . . . making it the fastest growing, and soon to be the largest, university in the world. *The billion dollar building program of the State University Construction Fund* providing the additional facilities needed by the University . . ." (Emphasis supplied)

Excerpt letter to Professor William D. Valente,

March 10, 1967, from Assistant Commissioner for Higher Education in New York, Allan A. Kuusisto: "The problem is not whether the state should do something for private higher education, but whether it should do more than it now does in the face of the rapid expansion of the public sector. As you may know, the State University of New York in the last three years, has grown dramatically, and the entire public sector now enrolls 50% of the students in the state, where only five years ago they enrolled slightly more than a third."

That Governor Rockefeller should appoint a select committee to enable the private institutions to carry a full share of the enrollment burden (Appendix III hereto) to avoid, if possible, the crushing burden of full public educational subsidy at New York's public institutions should surprise few, if any, economy minded citizens. New York now provides to private and church-related institutions most of the forms of assistance which are proposed for Pennsylvania in Part IV above. Even these aid programs have proven too modest in New York. How much more necessary are they then in Pennsylvania, which does not even approach the New York level and variety of aid programs in its Master Plan. Since in the words of the Master Plan these institutions have for "a century and a half . . . relieved the Commonwealth of a sizable financial responsibility" (MP 8), there is sound fiscal reason to encourage the continuance of such economies by aid policies which will encourage, rather than discourage, such private enterprise and support.

Recent studies by committees of the United States Chamber of Commerce and the Greater Philadelphia Chamber of Commerce on educational assistance at the pre-college level point to the same end. While each of these reports, as hereafter discussed, are addressed to the pre-college educational institutions, their central theme on the quality and cost values of "competition" in education apply directly to the area of higher education.

The Third Report of the Task Force on Economic Growth and Opportunity of the Chamber of Commerce of the United States, composed of 100 corporation presidents, under a subsection entitled "Competition in Education" with respect to Education and Employment, declared, according to a pre-publication release:

"The Task Force proposes to promote innovation . . . by administering a strong dose of that most stimulating of elixirs—private competition.

"Our concern is based in three general observations: Where market discipline . . . is absent, both complacency and timidity develop. The complacency comes from the sure knowledge that no institutional substitute is available. The timidity comes from the almost-as-sure knowledge that if glaring mistakes are avoided, job tenure is likely to be prolonged.

* * *

"The second observation in support of our conclusion is based on the virtue of diversity. Diverse groups, each pursuing institutional or personal self-interest . . . are more likely to produce divergent ideas than any monolith, no matter how tolerant.

"And finally, a strong bias in favor of free choice and maximum satisfaction of individual preferences underlies our conclusion. As an intrinsic matter, we think it desirable that parents should have a choice of schools for their children."

* * *

"The notion that government should not have a monopoly on publicly financed schooling, that it should be willing to compete in an open education market with proprietary and nonprofit institutions, is neither unique to us nor unprecedented." (Emphasis supplied)

The Draft Staff Memorandum of the Greater Philadelphia Chamber of Commerce relating to primary and secondary education (2/10/67) recommends for the pre-college private institutions the very proposal made in Part IV hereof for higher education institutions, namely government assistance for capital facilities expansion, through the device of authority financing.

It seems apparent, from a business as well as educational viewpoint, that state aid to private institutions will return considerably greater economies in educational subsidies as well as healthy diversity and freedom in education, than can be achieved by the preferential aid system which is fostered by the Master Plan.

B. ADVANTAGES OF AUTHORITY FINANCING

Two fiscal considerations regarding the proven need and fairness of authority financing, as against selective preferential grants, are here worthy of note.

The Commonwealth, like so many of its sister states, has found it necessary to fund almost all of its long term debt through "non-guaranteed" financing. 89.2% of the total Commonwealth long term debt is "non-guaranteed." See Chart 168, Facts and Figures on Government Finance—1967, Tax Foundation, Inc., which is attached hereto as Appendix IX. The success of the authority borrowing to raise such forms of debt is illustrated by the data published by the Pennsylv-

vania Department of Internal Affairs, Municipal Authorities, the Pennsylvania Experience (1962). Tables I and II of that study, which are attached hereto as Appendix X attest the tremendous growth both in borrowing units and dollar generation through public authorities. They also establish that the greatest growth has been in the area of greatest current need—education.

The second noteworthy fiscal justification for the creation of an educational facilities authority is set forth at page 39 of the referenced study:

"Authorities can claim a solid achievement because of the establishment of the *user cost principle*. This principle is generally accepted in commercial activities. It is consistent with our sense of justice based on the individualistic concept: each individual pays for the benefits he receives.

* * *

"Economists of the free enterprise tradition support user charges as a means of allocating resources in accordance with the wishes of the individual. If there is free competition . . . we have an ideal situation. . . ."

No better justification can be offered to adopt authority financing as the prime means of expanding educational facilities, not only at private institutions but also at state-related and state-aided institutions; than the equitable allocation and general reduction in the tax burdens upon the Commonwealth.

C. MEETING THE STATE'S INDUSTRIAL NEEDS

The opening theme of the Master Plan is that higher education is fundamental to the economy of the State. (MP 1) On this ground alone a state assistance policy that is effectively restricted to less than half of the state's institutions and half of the total student body, is self-defeating.

The state's ability to pay or arrange for much greater assistance and its assured return on such assistance is indicated by both the consultants to the Pennsylvania State Board of Education and the report of the New York Regents 1964 State-Wide Plan for the Expansion of Higher Education. The Regents report (p. 86) notes that increased subsidy to higher education is normally accompanied by much greater per capita personal income increases within the affected state. The consultants concluded their report to the Pennsylvania State Board of Education with the following remark:

"The income is there and can be expected to be available in the years ahead. . . . Here, as elsewhere in the country, financing higher education is a problem of policy, not of resources." (CR 207)

The ultimate beneficiary of realistic, effective aid to all segments of the higher education community will be the entire economy and citizen body of the state. They, not the servant institutions, will suffer most by adverse exclusion from such assistance.

D. ENCOURAGING DIVERSITY AS AN ELEMENT OF QUALITY AND OF LIBERTY IN EDUCATION

As noted in subsection A of this Part V, and Part II-A above, aid policies that benefit all institutions and their adherents promote quality and freedom in learning as well as the immediate goal of quantity expansion.

These values are not measurable in dollar terms, but they can be eroded by destructive financial competition through monopolized state assistance. To quote the 1964 State Wide Plan of the Board of Regents of New York:

"The flow of students through the 'production line' of higher education in a democratic social order should not be controlled by factors other than the ability and the free choice of the students." (p. 53)

Adoption of the broader-based assistance program, as suggested in Part IV above will materially reduce the real and costly dangers of a state concentration of educational power in the field of higher education.

Appendices

APPENDIX I

Excerpts from

DEPARTMENT OF PUBLIC INSTRUCTION
Projections of Selected Educational Statistics

APPENDIX II

Excerpts from

DEPARTMENT OF PUBLIC INSTRUCTION STATISTICAL TABLES
Endowments and Undergraduate Enrollments

APPENDIX III

Excerpts from

NEW YORK TIMES — MARCH 5, 1967

APPENDIX IV

Excerpts from

NEW YORK EDUCATION DEPARTMENT CIRCULAR
Regents Fellowships for Graduate Study

APPENDIX V

Excerpts from

LIST OF MAJOR FEDERAL ASSISTANCE PROGRAMS TO
CHURCH-RELATED INSTITUTIONS AND
PENNSYLVANIA PARTICIPATION THEREIN

APPENDIX VI

Excerpts from

ANNUAL REPORT, 1964-1965
NEW YORK DORMITORY AUTHORITY

APPENDIX VII

Excerpts from

LEGISLATIVE FINDINGS
New York, Connecticut and New Jersey Statutes
Creating Educational Assistance Authorities

APPENDIX VIII

Excerpts from

DEPARTMENT OF PUBLIC INSTRUCTION
Doctoral Enrollments by Institution

APPENDIX IX

Excerpts from

FACTS AND FIGURES ON GOVERNMENT FINANCE
1967 Ed. Tax Foundation, Inc.

APPENDIX X

Excerpts from

MUNICIPAL AUTHORITIES, THE PENNSYLVANIA EXPERIENCE
Pennsylvania Department of Internal Affairs

AUGUST, 1966



APPENDIX I

Excerpts from

**PROJECTIONS OF SELECTED EDUCATIONAL STATISTICS
FOR PENNSYLVANIA TO 1975-1976**

**PROJECTIONS OF SELECTED
EDUCATIONAL STATISTICS
FOR PENNSYLVANIA
TO 1975-1976**

**BUREAU OF STATISTICS
COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF PUBLIC INSTRUCTION
HARRISBURG**

CHART V

HIGHER EDUCATION ENROLLMENT BY INSTITUTIONAL CATEGORY, 1960-1975.

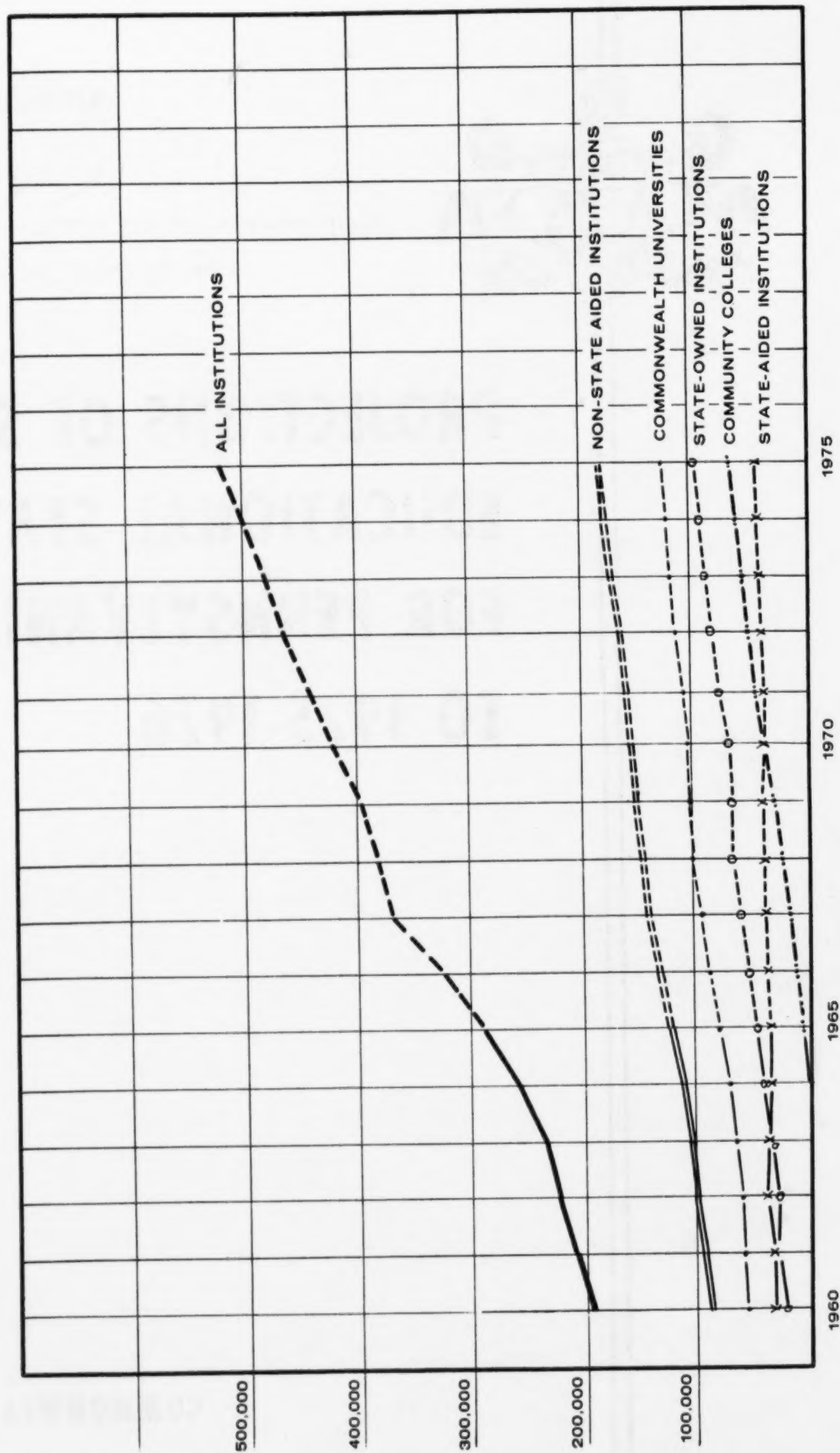


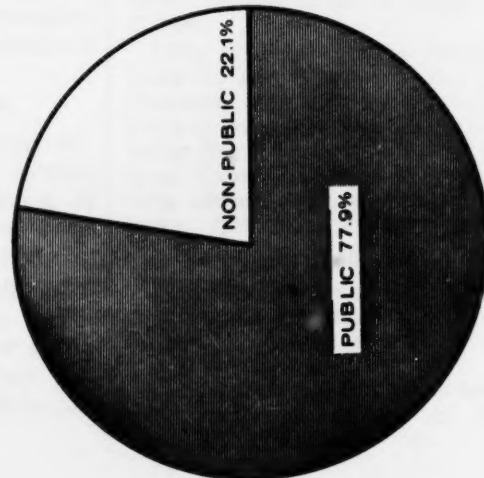
CHART VIII

ENROLLMENT

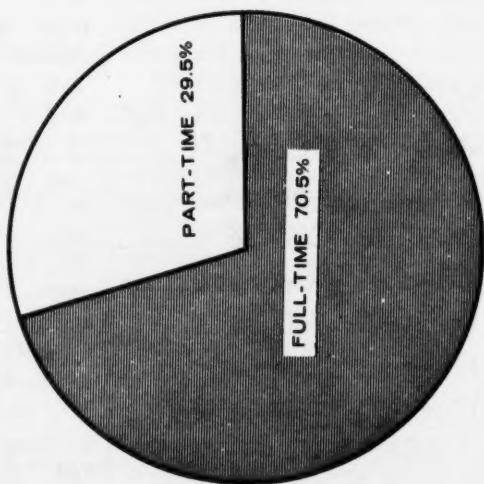
FALL, 1965

GRADUATES

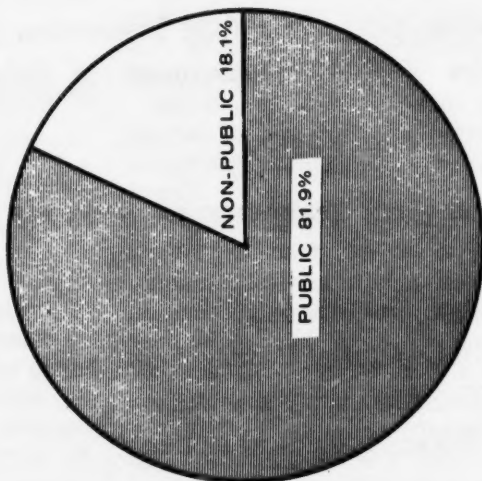
1965



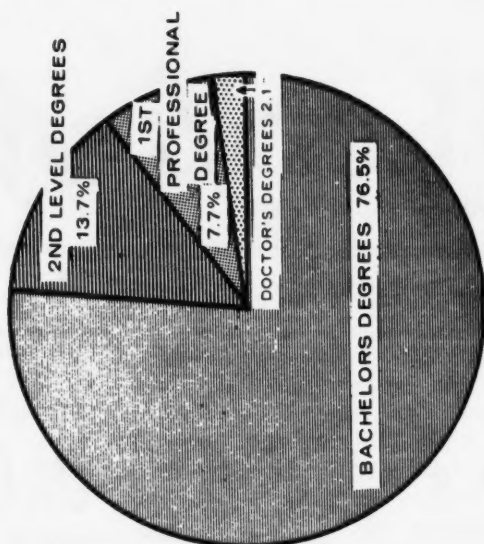
SCHOOLS



COLLEGES AND UNIVERSITIES



HIGH SCHOOL



COLLEGES AND UNIVERSITIES

PERSONS PREPARED TO TEACH

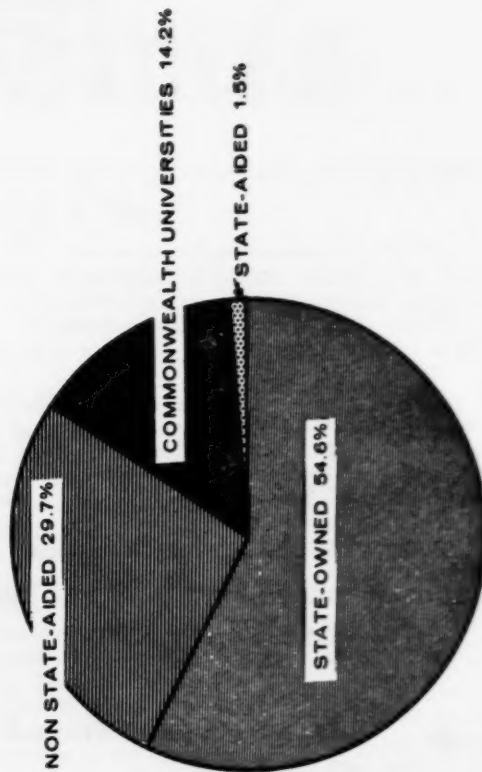
1964-1965



LEVEL



SEX



TYPE OF INSTITUTION ATTENDED

APPENDIX II

EXTRACTS:

Tables 52, 54, Statistical Report of the Superintendent of Public Instruction for School Year Ending June 30, 1964 (Series No. 11) Department of Public Instruction (1965)

STATE-AIDED AND STATE-RELATED INSTITUTIONS WITH ENDOWMENTS IN EXCESS OF \$3 MILLION:

Penn State University	Temple University
Drexel Institute of Technology	University of Pennsylvania
Jefferson Hospital	University of Pittsburgh
Moore College of Art*	Woman's Medical College

NON-STATE-AIDED INSTITUTIONS WITH ENDOWMENTS IN EXCESS OF \$3 MILLION; AND FULL-TIME UNDERGRADUATE ENROLLMENT FOR ABOVE PERIOD:

With undergraduate enrollments:

<i>Under 1000</i>	<i>Over 1000</i>
Academy of the New Church 66	Bryn Mawr College 2384
Haverford College 468	Allegheny College 1359
Chatham College 590	Dickinson College 1140
Swarthmore College 988	Grove City College 1840
Washington & Jefferson College .. 813	Lafayette College 1532
Wilson College 568	Bucknell University 2414
Franklin & Marshall College 403	Carnegie Institute of
Moravian College 905	Technology 2795
Ursinus College 957	Lehigh University 2647
Pittsburgh Theological Seminary 232	

*Not presently favored with state aid.

The New York Times

NEW YORK, SUNDAY, MARCH 5, 1967

GOVERNOR SEEKS NEW WAYS TO AID PRIVATE COLLEGES

**Names 5 Top Educators to
Panel to Study Costs—
Bundy to Head Group**

By FRED M. HECHINGER

Five leading educators were named yesterday to advise Governor Rockefeller and the Board of Regents on how the state can help "to preserve the strength and vitality" of privately financed colleges and universities.

McGeorge Bundy, president of the Ford Foundation, will serve as chairman of the group, which will face the problem of how to provide aid to the colleges, 84 of which have church affiliations, without violating the State Constitution and without violating the independence of the colleges.

The state's 137 private colleges and universities face increasingly difficult financial problems. To pay for their rising operating expenses, they are forced to raise tuition charges, while public ones are able to admit students to low-cost or even free higher education.

"This is a critical moment in the history of education," the Governor said. He called New York "a testing ground for the nationally important principles involved" in the commissioner's task.

Warns On Costs

Appointed to serve with Mr. Bundy were Dr. James Bryant Conant, president emeritus of Harvard University; Dr. John A. Hannah, president of Michigan State University; the Rev. Theodore M. Hesburgh, president of the University of Notre Dame, and Dr. Abram L. Sachar, president of Brandeis University.

The group will be known as the Select Committee on the Future of Private and Independent Higher Education in New York State. Mr. Rockefeller has asked it to report by next Jan. 1 on the following questions:

¶How can our vital private institutions for higher education be further strengthened in the decade ahead?

¶How can these private resources be appropriately related to our expanding public institutions?

¶What further specific aid should the state provide to private institutions in the context of existing and potential Federal, state and local financing while preserving the full independence of these institutions?

"Briefly," Mr. Rockefeller said, "the committee's task will be to advise the Governor and the Board of Regents on how the state can help preserve the strength and vitality of our private and independent institutions of higher education, yet at the same time keep them free."

He warned that, although the state has already taken a number of steps to support these institutions, "all of these actions may not be enough to prevent the burden of increasing costs of operations and capital construction from gradually eroding our private institutions of higher education."

The total enrollments in the state's 137 private colleges and universities is 332,000. The public colleges and universities—the 57 campuses of the State University system and the rapidly growing City University of New York—enroll a total of 328,000.

"We need all these institutions to keep up with the increasing demand for college-trained men and women," Governor Rockefeller said. "And we need them even more because they stimulate academic excellence, diversity and freedom."

Charges Going Up

Underlining the nature of the problem, undergraduate charges for an academic year at New York University are \$1,900 in tuition and fees, and are scheduled to rise to \$2,000. At Columbia, tuition is \$1,910.

Undergraduates attending a unit of the State University are charged \$400. Undergraduate education at the City University is tuition-free.

Governor Rockefeller pointed out that in the last eight years both public and private colleges and universities have received substantial increases in student scholarships, loans and fellowships as well as aid for the construction of academic and residential buildings.

The most controversial aid measure has been the Scholar Incentive Grants that offer direct aid to tuition-paying students ranging from \$100 to \$500 for undergraduates a year. This form of support was devised largely, in the opinion of many observers, to skirt the state's strict Constitutional prohibition against the use of public funds to support church-related institutions. As a result of these awards, which go directly to the student, colleges presumably were enabled to raise their tuition by equivalent amounts.

Rivalry Also an Issue

The grants underline a special difficulty of efforts to find aid formulas for private institutions, without violating the State Constitution. This issue, which is also expected to be a major item at the forthcoming Constitutional Convention, expected to be dealt with by the select committee.

Equally important, according to most education observers, is the avoidance of destructive rivalry between public and private institutions. When the State University was established in 1948, some spokesmen for private higher education opposed

such publicly financed competition, and the State Legislature at first tried to limit the State University's mission to that of "supplementing" the private ones.

However, the pressures of rising enrollment removed all such limitations. The state's annual expenditures for the support of the State and City Universities have gone from \$100-million in 1958 to more than \$600-million in the 1967-68 fiscal year.

Mr. Bundy, asked about plans for the study, said: "The Commission will go right to work under its mandate and will have nothing further to say until we know more about the job to be done."

However, some of the patterns that have emerged nationally and in the state in re-

cent years are certain to be given special consideration.

This may include cooperation between public and private institutions, with a certain amount of sharing in faculties and facilities. Recently, for example, private Yale University and public University of Connecticut have established some cooperative arrangements in medical education. The University of Massachusetts, a state institution, has long been co-operating with Amherst, Smith and Mount Holyoke Colleges, all private schools.

Federal aid for college and university construction goes to all types of institutions, both in grants and loans. Last month, the American Council on Education, a nongovernmental educational agency, urged Congress to provide general aid for the operating budgets of colleges and universities.

The members of the committee represent a variety of educational outlooks.

Mr. Bundy, who was dean of the arts and science faculties under Dr. Conant at Harvard before he became an adviser to both President Kennedy and President Johnson, now represents the interests of both private and public education as read of the Ford Foundation.

The foundation's special grants to private colleges across the country including such large ones as a \$35-million grant to Columbia, \$25-million to N.Y.U., emphasize the nature of the crisis.

Dr. Conant, in addition to his leadership career in private higher education, has spent the last 10 years in the study and reform of public education.

Father Hesburgh, in addition to representing Roman Catholic education, has been a member of numerous governmental commissions.

Dr. Hannah is widely considered a veteran spokesman for state universities.

Dr. Sachar heads the nation's only Jewish-sponsored but nonsectarian university.

APPENDIX IV

BACKGROUND OF THE PROGRAMS

In 1958, the Regents of the State of New York, recognizing the problem of maintaining an adequate supply of high quality college teachers for the colleges and universities of the State, established a program of 250 fellowships — to assist the universities within New York State offering doctoral programs for the preparation of college teachers and to encourage able and ambitious students to prepare for college teaching.

In 1960, a series of 100 advanced college teaching fellowships was added; in 1964, the program was further expanded through the establishment of 100 doctoral fellowships in arts, sciences, or engineering and 100 part-time doctoral fellowships in science and engineering. Last year, 90 New York State Herbert H. Lehman Fellowships in the Social Sciences, Public and International affairs, were enacted by the Legislature in honor of former Governor Lehman. Six hundred and forty fellowships now are available at an annual cost of approximately \$2,250,000.

WHAT FELLOWSHIPS ARE AVAILABLE FOR 1967-68

1. New York State Herbert H. Lehman Fellowships in the Social Sciences, Public and International Affairs — for masters or doctoral study.
2. Regents College Teaching Fellowships for Beginning Graduate Study — for students completing the bachelor's degree.
3. Regents College Teaching Fellowships for Advanced Graduate Study — for

students who have completed at least one year of graduate study.

4. Regents Fellowships for Doctoral Study in Arts, Science, or Engineering — for beginning or advanced doctoral students.

5. Regents Fellowships for Part-time Doctoral Study in Science and Engineering — for beginning or advanced part-time doctoral students.

The Regents Fellowships range in amount from \$500 minimum to \$2,500 maximum for full-time study, and from \$250 to \$1,250 for part-time, according to financial ability. The average annual award for full-time study is approximately \$1,800. The Lehman Fellowships contain provision for a flat annual award of \$4,000 for first year graduate and master's degree students, and \$5,000 for subsequent years of doctoral study. The beginning college teaching fellowships are good for two years; all other fellowships are good for one year, although students may reapply for up to a total of four years fellowship assistance. Applications must be submitted before December 1 to the Regents Examination and Scholarship Center, The State Education Department, Albany, New York 12224.

THE SELECTION PROCEDURES

Students who meet United States citizenship requirements and who are residents of New York State are eligible to apply for Regents Fellowships. Residents of other States may apply for Lehman Fellowships. Winners are

selected in the spring by committees of faculty members from graduate schools both in and out of New York State. Selection is based on the applicant's academic record, faculty recommendations, and scores on the Graduate Record Examination.

In the most recent competition, 6,937 applications were submitted for a total of 640 awards. Over 100 Regents Fellows also won Woodrow Wilson, National Defense, or National Science Foundation Fellowships or honorable mention. Since Regents Fellowships may not be held concurrently with other similar awards, a number are declined each year and thus become available to others who rank high on the alternate list.

Among fields of study represented by winners over the past years the social sciences and humanities have predominated, although the science and engineering fields have also been well represented.

Those who apply for the Regents College Teaching Fellowships must plan to teach in a college or university in New York State upon completion of their studies. They may attend graduate school at any college or university in the United States offering approved doctoral programs and having special provisions for the training of college teachers. Winners of the Arts, Science, or Engineering Fellowships and Lehman Fellowships are required to attend graduate school in New York State.

PROFILE OF WINNERS 1966-67	N.Y.S. Herbert H. Lehman Fellowships	Beginning College Teaching Fellowships	Advanced College Teaching Fellowships	Doctoral Fellowships	Part-Time Fellowships
Total number of completed applications	2317	1444	957	1992	227
Total number selected	90	250	100	100	87
Men	67	178	79	75	65
Women	23	72	21	25	22
Graduate Record Examination* and Academic Average					
GRE of 1,300+ A or A—	56	127	67	98	16
GRE of 1,100—1,300 A or A—	34	94	26	2	29
GRE less than 1,000 A or A—		4			7
GRE of 1,300+ B+ or B		22	7		8
Other		3			37

* Combined Aptitude Test Score,
Math Verbal

APPENDIX V

LIST OF MAJOR FEDERAL HIGHER EDUCATION ASSISTANCE PROGRAMS WHICH INCLUDES PRIVATE AND CHURCH-RELATED INSTITUTIONS

SOURCES:

United States Office of Education, Department of Health, Education and Welfare
Grants-in-Aid and Other Financial Assistance Programs (1966 Edition), U. S.
Government Printing Office
Education '65, A Report to the Profession (OE-11006)
Milestones in Education (88th Congress), (OE-10031-A—Rev. 1965)
Higher Education Act of 1965—Section by Section Analysis (OE-50045)
Cape, Guide to Federal Grants (Government Research Center, U. of Kansas—
1966)

CAPITAL FACILITIES ASSISTANCE:

Higher Education Facilities Act of 1963* (Titles I, II and III)
Nurses Training Act of 1964*
Health Professions Educational Assistance Act of 1963*

INSTRUCTIONAL EQUIPMENT AND MATERIALS

Higher Education Act of 1965*
Title II (Library Materials)
Title VI (Equipment Acquisition)
National Defense Education Act, as amended*
(Equipment for science, mathematics and language studies)

PROGRAM ASSISTANCE:

Health Professions Educational Assistance Act
Vocational Education Act* (Research and Demonstration Funds)
National Defense Education Act*
Title II — Student Loans
Title III — Instruction in Critical Subjects
Title IV — Graduate Fellowships
Title V-A — Guidance, Counseling, and Testing Services
Title V-B — Guidance and Counseling Training Institutes
Title VI — Language Development
Title IX — Science Information
Title XI — Training Institutes, Critical Subjects
Civil Rights Act of 1964
Title IV — Training Institutes
Economic Opportunity Act (Education Provisions)*
Nurse Training Act of 1964*
(Trade Teaching Employment Programs; Graduate Trainee Program)
Cooperative Research Act of 1954*
(Educational research, curriculum development, text, educational laboratories,
research in arts and humanities)
Elementary and Secondary Education Act*
(Title IV) (Similar programs to those listed under Cooperative Research Act)
National Educational and Cultural Exchange Act of 1961
(Research, fellowships, seminars)
Higher Education Act of 1965*
(Titles I, II, III and IV) (Community Service, Fellowships, Training Institu-
tions in Teaching and Library Specialties)

*Pennsylvania institutions have participated in these programs.

APPENDIX VI (EXCERPTS)

DORMITORY AUTHORITY OF THE STATE OF NEW YORK



ANNUAL REPORT 1964-1965

INTRODUCTION

The Dormitory Authority of the State of New York is a public benefit corporation established for the purpose of financing, constructing and equipping academic and residential buildings with related facilities at accredited private colleges and universities, dormitories and dining halls, with related facilities at units of the State University of New York and residences and related facilities for nursing students at accredited hospitals throughout the state.

The Hospital Program authorized by the 1964 Legislature is already attracting wide interest and is being launched with a proposed project at the Geneva General Hospital.

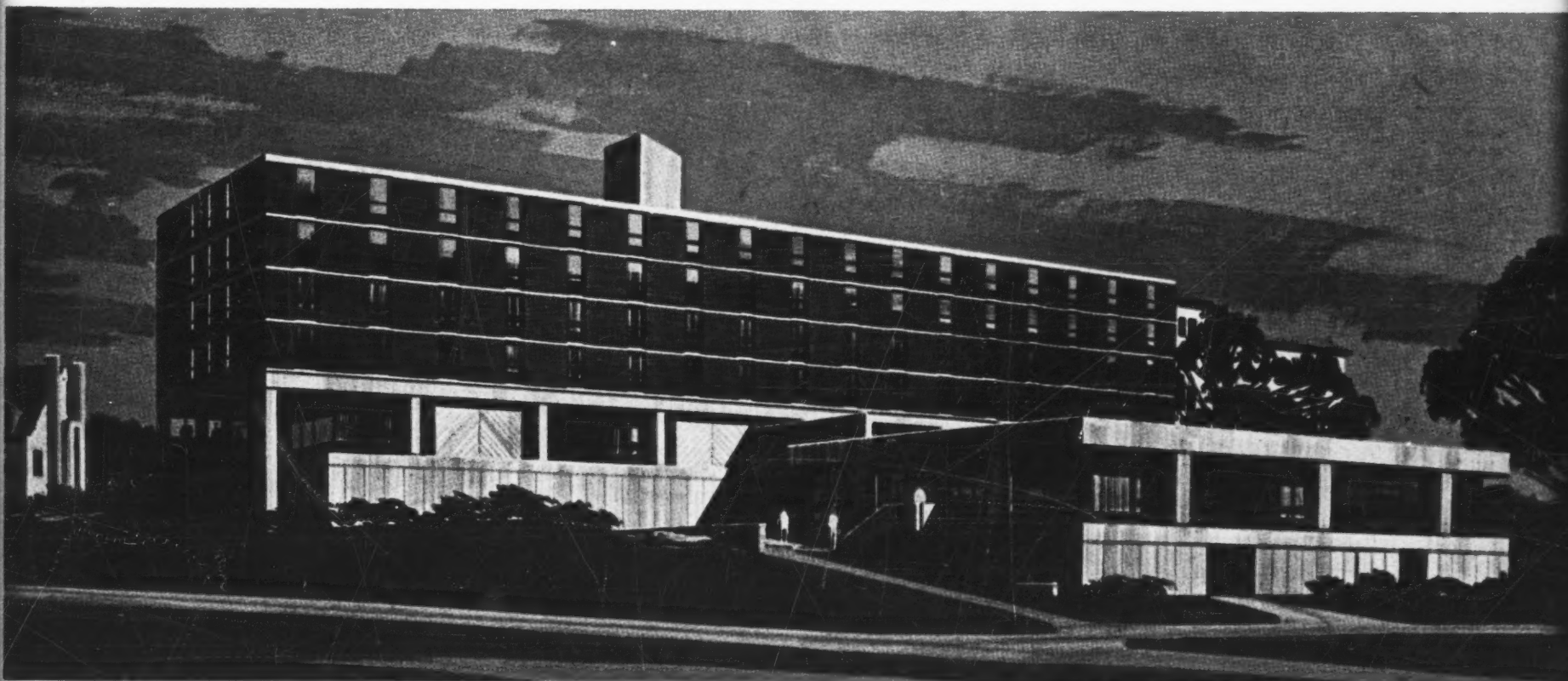
In the private college construction program, the Dormitory Authority is authorized to pay the cost of the complete project from the proceeds of tax-exempt obligations issued by the Authority. The private college pays rentals to the Authority under a lease agreement, which lease is a general obligation of the college.

In the case of the State University, the Authority finances, constructs and furnishes dormitories and dining halls. The Authority enters into leases and other appropriate agreements to carry out this program.

Dormitory Authority buildings now completed at both public and private campuses have a total project cost of \$184,435,179, while those in design or under construction have an approximate value of \$512,103,856. The Program for the State University includes 211 dormitories, housing 47,713 students and 68 dining halls, seating 29,288 students, and feeding approximately 58,576 students at each meal, at a total project cost of \$315,467,330. The program for private colleges includes residence and academic buildings of all kinds involving \$381,071,705 on 32 campuses throughout the State.

The Authority is thus a vital part of New York State's effort to meet sharply increased enrollments forecast by 1970, as well as to improve existing facilities to provide better quality education. Long experience in constructing college buildings, together with flexible programming and simplified procedures, has enabled the Authority to proceed rapidly and to achieve economy in a tremendous variety of projects, thereby permitting college personnel to devote their full attention to vital academic tasks. With a current building program of nearly \$512,100,000 it is contributing significantly and steadily to a solution of one of our most severe problems in higher education: the provision of truly adequate facilities.

Ladycliff College — Dormitory



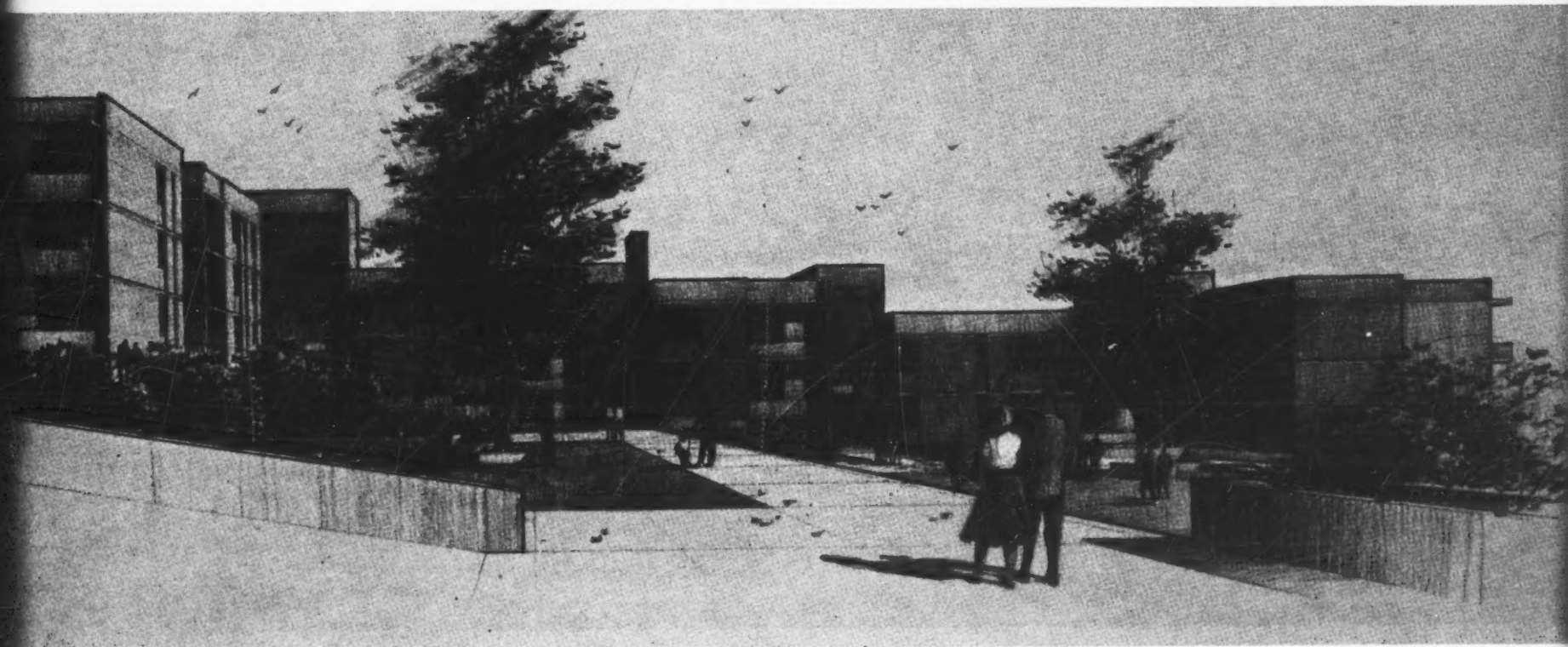
PART ONE

LEGISLATION

The present membership of the Board includes four members appointed by the Board of Regents and three ex-officio members, the State Comptroller, the Commissioner of Education and the President of the State University of New York. The members of the Board serve without compensation but are reimbursed for their traveling expenses. The Board meets on the second Monday of each month to transact the official business of the Authority including appointment of architects, awarding of contracts, authorizing the issuance of its bonds, approval of policies and agreements, appointment of personnel and reviewing the monthly financial and construction reports.

The original law creating the Dormitory Authority (Chapter 524 of the Laws of 1944) provided for the creation of a Dormitory Authority Board, "a body corporate and politic, constituting a public benefit corporation". This Board consisted of the Commissioner of Education, the Comptroller and six members to be appointed by the Board of Regents, four from among the members of the Boards of Visitors of the State Teachers Colleges and two from among the presidents of the Teachers Colleges. This law, which also authorized the Dormitory Authority to

Rensselaer Polytechnic Institute — Married Student Housing



construct dormitories and related facilities at the 11 Teachers Colleges, has been amended several times. Most of the amendments made minor changes in the law but the following amendments extended the powers of the Authority:

Chapter 580 of the Laws of 1948 authorized the Authority to construct dormitories and related facilities at the Institutes of Applied Arts and Sciences, Agricultural and Technical Institutes, State Colleges of Forestry and Ceramics, State Maritime College and the State Colleges at Cornell University. It reconstituted the Dormitory Authority Board to consist of the Commissioner of Education, the Comptroller and five members to be appointed by the Board of Regents.

Chapter 323 of the Laws of 1954 authorized the Authority to construct dormitories and related facilities at State-operated Institutions or Statutory or Contract Colleges which are under the jurisdiction of the State University, as defined in Section 350 of the Educational Law. It also made the President of the State University a member of the Authority and reduced from five to four the number to be appointed by the Board of Regents.

Chapter 850 of the Laws of 1955 authorized the Authority to construct or otherwise provide and operate dormitories and attendant facilities for the use and benefit of students attending the private colleges of the State.

Chapter 864 of the Laws of 1959 authorized the Authority to construct "housing, including all necessary and usual attendant and related facilities and equipment, erected for the use of students, academic building, library, laboratory, classroom or other buildings or structures essential, necessary or useful for instruction in the academic program at any institution of higher education located in this State and authorized to confer degrees by law or by the Board of Regents other than State-operated Institutions or Statutory or Contract Colleges under the jurisdiction of the State University of New York."

Chapter 744 of the Laws of 1964 authorized the Authority to construct academic facilities, residences and related facilities for nursing students at accredited hospitals throughout the state.

Chapter 888 of the Laws of 1965 authorized the Authority to construct a facility for the New York Academy of Sciences.



St. John Fisher College — Classroom Building

Audit and Control of the State of New York. All figures included in this report have been so audited and copies of the audit reports are on file in the office of the Authority. Federal audits are made of all funds received from the U. S. Housing and Home Finance Agency.

INTERIOR FURNISHINGS

The interior furnishings program for 1965 proceeded at an accelerated pace to meet expanding State University enrollments and pre-determined construction completion schedule. Suppliers were requested to tag each item ordered with the specific room in which it was to be placed and a colored furniture layout drawing was furnished each college to aid in setting up individual rooms. Large quantities of furniture were supplied on an "advanced stage" basis to permit double occupancy of existing facilities, pending completion of new building schedules for next year.

Careful attention was given to the design and development of furniture and equipment during the year. The standard student room desk, chest and chair were completely redesigned, incorporating many improvements over previous models. The mirror light unit was redesigned to furnish greater overall lighting in the room and is now finished in grained metal lithostrip to harmonize with the finish of the room furniture. The student room floor lamp was gone over minutely and a series of technical improvements was made to double the foot-candle power output available at working desk level.

ANNUAL AUDIT

All financial records are audited as of June 30, the last day of the Authority's fiscal year, by the Department of

CONSTRUCTION REPORT FOR YEAR 1964-65

The following table presents a summary of dormitories and dining halls at State University completed or under construction during the year, projects to be bid, and projects in the planning stage, with estimated costs for the year ending June 30, 1965.

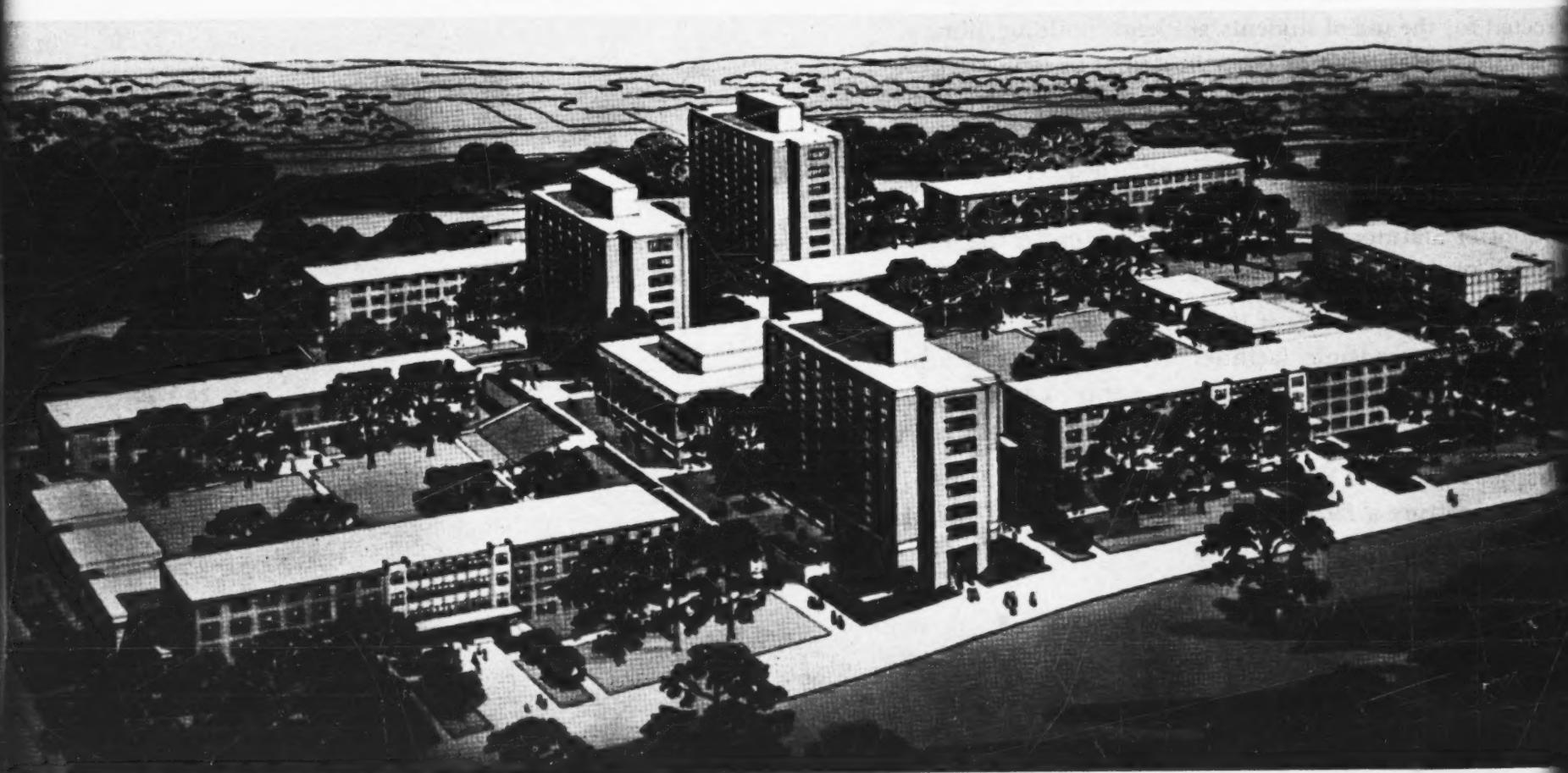
SUMMARY TABLE

Buildings	Dormitories		Dining Halls		Estimated Cost
	No.	Beds	No.	Seats	
Completed	23	4,926	3	1,570	\$ 35,984,470
Under Construction	20	4,516	10	4,720	37,676,744
To Be Bid	15	4,737	7	3,457	34,669,111
In Planning Stage	30	6,020	8	3,550	40,530,000
Total 1964-65	88	20,199	28	13,297	\$148,860,325

Each "stage" includes a number of dormitories and dining halls to be provided for various units of the State University. The estimated cost of these facilities is then used by the Authority in determining the amount of the bond issue for each particular "stage."

The following table provides a factual consolidated report of ten stages of permanent construction showing the facilities completed, those under construction, and the projects in the planning stage. Detailed information in regard to each stage of construction is shown in the

State University College at Cortland — Dormitory and Dining Hall Complex



further tables immediately following. These tables show the facilities provided at each of the State University units, including the number of students accommodated in the dormitories and dining halls, dates of completion and estimated costs of construction and equipment. Cost of service connections and improvement of grounds are not included.

CONSOLIDATED REPORT
Eleven Stages

Stage	Projects	Dormitories		Dining Halls		Date of Completion	Cost
		No.	Beds	No.	Seats		
I—Completed		14	3,254	14	*3,481	1951	\$ 15,970,812
II—Completed		20	3,506	2	1,120	1958-59-60	18,335,105
III—Completed		13	2,541	8	3,400	1959-60-61	17,298,184
IV—Completed		14	2,992	3	1,310	1960-61-62	16,350,733
V—Completed		12	2,464	5	2,320	1962-63	17,231,593
Under Construction		2	432			1966	2,666,981
VI—Completed		16	3,733	1	672	1963-64-65	21,719,240
VII—Completed		15	3,506	3	1,570	1964-65	26,423,126
Under Construction		2	421	3	1,400	1965-66	6,070,621
To be Bid		2	446	1	600	1967	3,952,281
VIII—Completed		12	2,960	0	0	1964-65	18,503,086
Under Construction		19	4,382	8	3,908	1965-66	34,791,685
To be Bid		7	2,164	1	500	1967	13,226,500
IX—Under Construction		9	2,087	2	1,100	1966-67	14,200,272
To be Bid		7	1,702	1	500	1966-67	10,555,000
X—Under Construction		2	366	1	400	1966-67	2,973,000
To be Bid		15	4,737	7	3,457	1966-67	34,669,111
XI—In Planning Stage		30	6,020	8	3,550	1967-68	40,530,000
		211	47,713	68	29,288		\$315,467,330

* Stage I Dining Halls were included in the Dormitories.

DETAILED STAGES OF CONSTRUCTION

The following tables provide detailed information regarding each stage of the construction program. The tables also give detailed information regarding facilities provided at each of the State University campuses.

The dining halls will serve twice the number of their seating capacity. These dining facilities are also used by a large number of students who do not live in the dormitories.

STAGE I PROGRAM — COMPLETED PROJECTS

State University	Number of Students	Date of Completion	Total Cost Including Furniture and Equipment
Albany	300	1951	\$ 1,642,175
Brockport	208	1951	1,027,926
Buffalo	300	1950	1,558,593
Cobleskill	63	1951	150,361
Cortland	364	1951	1,879,407
Farmingdale	198	1951	379,914
Fredonia	205	1951	1,088,410
Geneseo	204	1951	1,156,126
Morrisville	158	1952	286,328
New Paltz	254	1951	1,403,909
Oneonta	208	1951	1,139,228
Oswego	300	1951	1,617,338
Plattsburgh	244	1951	1,467,338
Potsdam	248	1951	1,173,759
Total	3,254		\$15,970,812
Total — Stage I Completed Projects			\$15,970,812

State University Agricultural and Technical College at Alfred — Main Lounge, Dormitory



APPENDIX VII

(NEW YORK DORMITORY ACT)

"It is hereby declared that a serious public emergency exists affecting and threatening the welfare, comfort, health, and safety of the people of the state and resulting from the fact that financial resources are lacking with which to construct sorely needed academic facilities at institutions of higher education which are maintained under private auspices. . . . All resources of the state must be marshalled in order to meet the tremendous demand . . . and the resources at private colleges and universities are not great enough to start at once on the construction of all academic buildings which are so urgently needed. . . . (N.Y. L. 1956 c. 864, Sec. 1)

(CONNECTICUT EDUCATIONAL FACILITIES AUTHORITY ACT)

"It is hereby declared that for the benefit of the people of the state, the increase of their commerce, welfare and prosperity and the improvement of the . . . living conditions . . . it is essential that institutions of higher education within the state be provided with appropriate additional means to assist such youth . . . and it is the purpose of this chapter . . . to enable institutions of higher education in the state to provide the facilities and structures which are sorely needed to accomplish the purposes of this chapter, all to the public benefit and good. . . ." (1965 P.A. 170, Sec. 1)

(NEW JERSEY HIGHER EDUCATIONAL FACILITIES ACT)

"It is hereby declared that a serious public emergency exists affecting and threatening the welfare, comfort, health, safety, and prosperity of the people of the State and resulting from the fact that financial resources are lacking with which to construct required dormitory and other educational facilities at public and private institutions of higher education; . . . that it is essential that institutions of higher education within the State be provided with appropriate additional means to assist such youth . . . ; that it is essential that all resources of the State be employed in order to meet the tremendous demand . . . and that it is the purpose of this act to provide a measure of assistance and . . . to provide the facilities which are sorely needed to accomplish the purposes of this act, all to the public benefit and good. . . ." (N.J. L. 1966 c. 106, Sec. 1)

APPENDIX VIII

Commonwealth of Pennsylvania
DEPARTMENT OF PUBLIC INSTRUCTION
Bureau of Statistics
Harrisburg
June 30, 1966

FULL-TIME ENROLLMENTS FOR DOCTORATES, FALL, 1965

Drexel Institute of Technology	5
Hahnemann Medical College and Hospital	25
Jefferson Medical College of Philadelphia	25
Temple University	116
University of Pennsylvania	842
University of Pittsburgh	745
Woman's Medical College of Pennsylvania	1
Pennsylvania State University	

FIRST-PROFESSIONAL ENROLLMENTS, FALL, 1965

Hahnemann Medical College and Hospital	417 — Medicine
Jefferson Medical College and Hospital	651 — Medicine
Pennsylvania College of Optometry	280 — Optometry
Philadelphia College of Osteopathy	354 — Osteopathy
Temple University	545 — Medicine
	478 — Dentistry
University of Pennsylvania	511 — Medicine
	249 — Veterinary Medicine
	480 — Dentistry
University of Pittsburgh	368 — Medicine
	384 — Dentistry
	19 — Public Health
Woman's Medical College of Pennsylvania	209 — Medicine

APPENDIX VIII

Commonwealth of Pennsylvania
DEPARTMENT OF PUBLIC INSTRUCTION
Bureau of Statistics
Harrisburg
June 30, 1966

FIRST - PROFESSIONAL DEGREES CONFERRED, 1964-65

	Doctor's Degrees Conferred 1964-1965	Dentistry	Medicine	Optometry	Osteopathy	Public Health	Veterinary Medicine
The Pennsylvania State University	232						
Hahnemann Medical College	5		94				
Jefferson Medical College	4		157				
Pennsylvania College of Optometry				42			
Philadelphia College of Osteopathy					73		
Temple University	54	112	126				
University of Pennsylvania	246	105	124				
University of Pittsburgh	158	88	88			17	
Woman's Medical College	2		46				49

Appendix IX
Facts and Figures on Government Finance—
1967 Ed., Tax Foundation, Inc.

168. State Long-Term Debt by Character and State

End of Fiscal 1965
(Dollar Figures in Thousands)

State	Gross long-term debt	Full faith and credit		Nonguaranteed	
		Total(a)	General obligation	Amount	Percent of Total
Total.....	\$26,234,529	\$11,819,299	\$8,596,959	\$14,415,230	55.0
Alabama.....	394,869	51,650	49,075	343,219	86.9
Alaska.....	63,968	36,737	36,737	27,231	42.6
Arizona.....	38,800	—	—	38,800	100.0
Arkansas.....	100,419	43,063	43,063	57,356	57.1
California.....	3,681,750	3,470,716	2,180,576	211,034	5.7
Colorado.....	111,350	—	—	111,350	100.0
Connecticut.....	1,043,465	702,383	523,593	341,082	32.7
Delaware.....	284,458	245,341	245,341	39,117	13.8
Florida.....	737,267	—	—	737,267	100.0
Georgia.....	562,975	16	16	562,959	(b)
Hawaii.....	286,815	194,287	194,287	92,528	32.3
Idaho.....	13,413	1,111	1,111	12,302	91.7
Illinois.....	1,086,915	397,223	397,223	689,692	63.4
Indiana.....	465,720	205	—	465,515	(b)
Iowa.....	67,870	22,610	22,610	45,260	66.7
Kansas.....	248,400	18,605	—	229,795	92.5
Kentucky.....	725,404	173,830	173,830	551,574	76.0
Louisiana.....	599,491	364,505	364,505	234,986	39.2
Maine.....	153,207	67,820	50,670	85,287	55.7
Maryland.....	773,649	329,651	305,375	443,998	57.4
Massachusetts.....	1,731,337	1,041,775	797,696	689,562	39.8
Michigan.....	948,700	72,100	72,100	876,600	92.4
Minnesota.....	263,051	219,965	219,965	43,086	16.4
Mississippi.....	249,495	119,328	119,328	130,167	52.2
Missouri.....	117,838	51,650	51,650	66,188	56.2
Montana.....	62,253	2,144	2,144	60,109	96.6
Nebraska.....	41,487	—	—	41,487	100.0
Nevada.....	11,530	7,658	7,658	3,872	33.6
New Hampshire.....	96,811	93,266	93,266	3,545	3.7
New Jersey.....	1,052,020	554,510	279,310	497,518	47.3
New Mexico.....	108,739	23,436	23,436	85,303	78.4
New York.....	3,886,690	1,562,962	411,958	2,323,728	59.8
North Carolina.....	226,852	197,418	197,418	29,434	13.0
North Dakota.....	22,556	3,297	3,297	19,199	84.9
Ohio.....	811,520	94,867	94,867	716,653	88.3
Oklahoma.....	391,431	68,300	68,300	323,131	82.6
Oregon.....	451,432	451,384	441,634	48	(c)
Pennsylvania.....	1,743,197	188,541	188,541	1,554,656	89.2
Rhode Island.....	174,210	161,620	152,720	12,590	7.2
South Carolina.....	240,183	175,021	175,021	65,162	27.1
South Dakota.....	16,539	—	—	16,539	100.0
Tennessee.....	183,317	163,019	163,019	20,307	11.1
Texas.....	533,547	263,395	263,395	270,152	50.6
Utah.....	29,977	—	—	29,977	100.0
Vermont.....	73,219	65,864	64,299	7,355	10.0
Virginia.....	241,482	1,545	1,545	239,937	99.4
Washington.....	521,178	43,350	43,350	475,828	91.3
West Virginia.....	333,684	70,940	70,940	262,724	78.7
Wisconsin.....	215,375	—	—	215,375	100.0
Wyoming.....	14,686	—	—	14,686	100.0

(a) Total includes general obligation debt plus \$3,222,340,000 in amounts payable initially from specified nontax revenue.

(b) More than 99.9%.

(c) Less than .05%.

Source: Department of Commerce, Bureau of the Census. Percent of total computed by Tax Foundation.

APPENDIX X

TABLE I
NUMBER AND BONDED INDEBTEDNESS OF MUNICIPAL AUTHORITIES
IN PENNSYLVANIA BY TYPE, 1960

<i>Type of Authority</i>	<i>Total Number of Authorities¹</i>	<i>Total Number of Projects</i>	<i>Amount of Original Bond Issues²</i>	<i>Amount of Bond Issues² Outstanding</i>
Total	1,364	1,459	\$1,430,363,040	\$1,293,105,347
School Authorities	643	658	824,208,000	759,185,486
Water Authorities	199	280	236,886,175	194,466,663
Sewer Authorities	238	322	319,492,965	294,267,000
Multi-Purpose Authorities ³	93	—	—	—
Parking Authorities	80	83	42,203,300	38,248,598
Airport Authorities	21	21	1,050,000	790,000
Miscellaneous Authorities ⁴	42	47	6,522,600	6,147,600
No Known Purpose Authorities	48	48	—	—

1. Number of Authorities as of October, 1960.

2. Bond information as of December 31, 1959.

3. Includes such Authorities as buildings and land; parking, sewer, and water; sewer and water; and school and water. Of the 188 projects in this group, there were 15 school, 81 water, 84 sewer, 3 parking, and 5 miscellaneous Authorities represented. The bond issues amounting to \$127,108,000 were allocated as follows: school \$26,696,000, water \$43,876,500, sewer \$54,317,500, parking \$1,198,000, and miscellaneous \$1,020,000.

4. Includes such Authorities as: auditoriums, factory buildings, flood control, incinerators, municipal buildings, parks, and swimming pools.

Source: Department of Internal Affairs, Bureau of Statistics, *Pennsylvania Municipal Authorities, 1960* (Harrisburg: 1960), p. 1.

TABLE II
NUMBER OF MUNICIPAL AUTHORITIES CREATED
AND VALUE OF BONDS ISSUED, 1935-1959

<i>Year</i>	<i>Number of Authorities Created</i>	<i>Amount of Bonds Issued (In Thousands)</i>	<i>Year</i>	<i>Number of Authorities Created</i>	<i>Amount of Bonds Issued (In Thousands)</i>
1935	2	—	1950	96	59,841
1936	—	—	1951	87	39,968
1937	5	—	1952	192	58,160
1938	13	\$2,150	1953	130	125,982
1939	4	2,150	1954	99	171,324
1940	21	8,381	1955	110	110,685
1941	15	2,796	1956	106	174,472
1942	11	4,822	1957	99	225,279
1943	4	5,150	1958	99	195,166
1944	3	5,132	1959	83	177,507
1945	10	3,147	TOTAL	1,302	\$1,428,253
1946	22	20,804			
1947	21	9,378			
1948	30	5,629			
1949	38	16,158			

Source: Adapted from tables in Department of Internal Affairs, Bureau of Statistics, *Statistics for Municipal Authorities in Pennsylvania: 1959*, Release No. A-50 (Harrisburg: May, 1961).

APPENDIX XI

PROPOSED SPECIMEN BILL TO CREATE A PENNSYLVANIA HIGHER EDUCATIONAL FACILITIES AUTHORITY

INDEX OF SECTIONS OF BILL

	<i>Section</i>
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Short Title	2
Definitions	3
Higher Educational Facilities Authority	4
Powers of the Authority	5
Notes of the Authority	6
Bonds	7
Trust Agreement to Secure Bonds	8
Bonds Not Obligations of Commonwealth or Political Subdivisions	9
Fixing of Charges — Use of Moneys	10
Use of Proceeds	11
Bondholders — Enforcement of Rights and Duties	12
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Limitation of Powers	17
Annual Audit	18
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Construction of Act	21
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Appendix XI

AN ACT to promote the welfare of the people of the Commonwealth of Pennsylvania; to provide educational facilities and related facilities at non-profit institutions of higher education in the Commonwealth of Pennsylvania; and establishing the Pennsylvania Higher Educational Facilities Authority as a body corporate and politic with power to acquire, construct, improve, renovate, maintain, equip, furnish, operate, and dispose of educational facilities; authorizing and regulating the issuance of notes and bonds by said authority, and providing that no debt, obligation, or credit of the Commonwealth or its political subdivisions, shall be incurred in the exercise of any powers granted by this Act.

THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA HEREBY ENACTS AS FOLLOWS:

Section 1. LEGISLATIVE FINDINGS AND POLICY

The Senate and Assembly hereby find that the commerce, prosperity, welfare and security of the Commonwealth require that this and future generations of youth be assured ample opportunity to develop their intellectual capacities and that this opportunity is and will continue to be jeopardized unless the institutions of higher education in this Commonwealth are encouraged and assisted in their efforts to accommodate rapidly mounting numbers of youth who desire and require higher education. The Senate and Assembly further find that all institutions of higher education in this Commonwealth are an essential and integral part of the total educational resources and effort required to be employed to meet the tremendous need for higher education; that a serious public emergency exists from the lack of financial resources by such institutions with which to provide required educational facilities; and that it is necessary and proper for the Commonwealth to provide a measure of assistance and an alternative method to enable such institutions to provide educational facilities which are sorely needed to accomplish the purposes of this act, all to the public benefit and good, to the extent and manner provided herein.

Section 2. SHORT TITLE

This act shall be known and may be cited as The Pennsylvania Higher Educational Facilities Authority Act.

Section 3. DEFINITIONS

As used in this act, the following words and terms shall have the following meanings, unless the context indicates or requires another or different meaning or intent:

"Authority" means the body politic and corporate created by this act, or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority by this act shall be given by law;

"Board" shall mean the members of the authority.

"Bond" means bonds, notes, and other evidences of indebtedness or obligations which the authority is authorized to issue pursuant to this act;

"Educational Facility" means any site or structure suitable for use in academic research and cultural programs, and in activities necessary and incidental thereto, including, but not limited to, classrooms, laboratories, libraries, research facilities, academic buildings, dormitory and housing units, dining halls, student unions, administration buildings, athletic and health care facilities, parking, maintenance, storage and utility facilities, and all the facilities, equipment, materials and furnishings necessary and usually attendant in said structures; provided that "educational facility" shall not include any facility used or to be used for sectarian instruction or study, or as a place for devotional activities or religious worship.

"College" means any non-profit educational institution empowered to provide a program of education beyond the high school level and which, by virtue of governing law and regulation, is recognized by the State Board of Education as an institution of higher education.

"Participating college" means an institution of higher education which, pursuant to this act, participates with the authority in undertaking a project.

"Project" means any educational facility or undertaking relating thereto which the authority is authorized to acquire, construct, reconstruct, improve, maintain, equip, furnish, operate or dispose of under this act.

Section 4. HIGHER EDUCATIONAL FACILITIES AUTHORITY

(a) There is hereby created a body politic and corporate, with corporate succession to be known as "The Pennsylvania Higher Educational Facilities Authority." Said authority is constituted a public instrumentality, and the exercise by the authority of powers conferred by this act shall be deemed and held to be the performance of an essential public function.

(b) The authority shall consist of seven members, consisting of the Chairman of the Council on Higher Education, ex officio, the Chairman of the State Com-

mission on Academic Facilities, ex officio, the Auditor General, ex officio, and four residents of the Commonwealth who shall be appointed by the Governor, provided that not more than three of such appointed members shall be members of the same political party. The terms of the members appointed by the Governor shall be arranged by the Governor so that one of such terms shall expire on June 30 in each succeeding year ensuing after such appointments. Each appointed member shall hold office for the term of his appointment and until his successor shall have been appointed and qualified. Any vacancy among members appointed by the Governor shall be filled by appointment for the unexpired term only. A member of the authority shall be eligible for reappointment.

(c) Any member of the authority appointed by the Governor may be removed from office by the Governor for cause.

(d) The members of the authority shall serve without compensation but the authority may reimburse its members for necessary expenses incurred in the discharge of their duties.

(e) The authority shall annually elect one of its members as Chairman, one as Vice Chairman and one as Secretary, who shall hold office until June 30 next ensuing and until their respective successors have been qualified.

(f) The authority shall appoint an executive director, who shall not be a member of the authority and who shall serve at the pleasure of the authority and receive such compensation as shall be fixed by the authority.

(g) Four members of the authority shall constitute a quorum and the affirmative vote of a majority of the members present at a meeting of the authority shall be necessary for any action taken by the authority. No vacancy in the membership of the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(h) Notwithstanding any other law to the contrary, it shall not be or constitute a conflict of interest for a trustee, director, officer or employee of a college, including a participating college, or of any business organization to serve as a member of the authority; provided such person shall abstain from official discussion, deliberation, action and vote by the authority in specific respect to the college or organization of which such member is a trustee, director, officer, or employee.

Section 5. POWERS OF THE AUTHORITY

The authority shall have power:

(a) to adopt by-laws and regulations for the management and conduct of its business and affairs;

(b) to adopt and employ an official seal and to alter the same at pleasure;

(c) to sue and be sued, plead and be impleaded;

(d) to employ or contract with such experts, agents and employees as it deems advisable and to fix their duties and compensation;

(e) to borrow money and to issue bonds, notes and other obligations of the authority and to provide for the rights of holders thereof as provided in this act;

(f) to acquire, hold and dispose of real and personal property or any interest therein, in the exercise of its powers and the performance of its duties under this act.

(g) to acquire by purchase, gift, condemnation, lease or otherwise and to construct, reconstruct, expand, improve, equip, furnish, maintain, operate, lease, mortgage or otherwise dispose of educational facilities and projects, or portions thereof;

(h) to receive and accept from any government, public or private agency, entity, or individual grants or loans for, or in aid of, the acquisition or development of any project, whether in money, property, labor or other thing of value to be held, used and applied only for the purposes for which such grants, loans and contributions may be made;

(i) to have the power of eminent domain;

(j) to prepare or have prepared plans, specifications, designs, estimates of cost, and from time to time modifications thereof, for the acquisition or development of projects;

(k) to determine the location and character of a project; and to acquire or lease, as lessor or lessee, construct, reconstruct, rehabilitate, improve and furnish and equip a project, whether directly by its own employees or by contract or contracts, and to enter into contracts for any or all such purposes; to enter into contracts for the management and operation of a project; and to designate a participating college as the agent of the authority for any or all of such purposes, including the making of contracts for the management and operation of such project;

(l) to establish, and to authorize a participating college to establish, rules and regulations for the use of a project or portion thereof undertaken thereof by such college;

(m) to fix and revise, from time to time, and to charge and collect rates, rents, fees and other charges for the use of and service furnished or to be furnished by a project or portion thereof and to contract with the holders of its bonds and obligations, and with any other person or party, public or private, in respect thereof, including without limitation the mortgaging of any project or project site for the benefit of holders of bonds issued to finance such project and the pledging of revenues from such project for the benefit of such bondholders;

(n) to make loans to any participating college toward the cost of a project, in amounts not to exceed

the total cost of the project as agreed upon and approved by the authority;

(o) to make loans to a participating college to refund outstanding obligations made or given by such college for the cost of a project;

(p) to make only from gifts received by the authority for such purposes, supplemental grants in aid of a project which by the terms of the gift qualifies for such supplemental grant;

(q) to charge and equitably apportion among participating colleges the costs and expenses incurred by the authority in the exercise of its powers and duties under this Act;

(r) to invest any moneys held in reserve or sinking funds, or any money not required for immediate use or disbursement, at the discretion of the authority, in such obligations as are authorized by law;

PROVIDED that all expenses incurred in carrying out the provisions of this Act shall be payable from funds provided or to be provided by the authority therefor, and

FURTHER PROVIDED that the authority shall have no power at any time or in any manner to pledge the credit or taxing power of the Commonwealth or any of its political subdivisions, nor shall the Commonwealth or any of its political subdivisions be liable for the payment of any obligations of the authority.

Section 6. NOTES OF THE AUTHORITY

The authority is authorized from time to time to issue its negotiable notes for any corporate purpose and to renew the same, in whole or in part, at or before maturity, whether to renew or discharge obligations then outstanding or for any other purpose. Such notes may be authorized, sold, executed and delivered in the same manner as bonds. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any resolution authorizing bonds of the authority, and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. All such notes shall be payable from the revenues or other moneys of the authority, subject only to any contractual rights of the holders of any of its notes or other obligations then outstanding.

Section 7. BONDS

(a) The authority is authorized from time to time to issue its negotiable bonds for any corporate purpose. In anticipation of the sale of such bonds the authority may issue negotiable bond anticipation notes and may renew the same from time to time, but the maximum maturity of any such note, including renewals thereof, shall not exceed five years from the date of issue of the original note. Such notes shall be paid from any revenues or other moneys of the au-

thority available therefor and not otherwise pledged, or from the proceeds of sale of the bonds of the authority in anticipation of which they were issued. The notes shall be issued in the same manner as the bonds. Such notes and the resolution or resolutions authorizing the same may contain any provisions, conditions or limitations which a bond resolution of the authority may contain.

(b) Except as may otherwise be expressly provided by the authority, every issue of its bonds or notes shall be general obligations of the authority payable from any revenues or moneys of the authority, subject only to any agreements with the holders of particular bonds or notes pledging any particular revenues or moneys. Notwithstanding that bonds and notes may be payable from a special fund, they shall be fully negotiable within the meaning of the Pennsylvania Uniform Commercial Code, subject only to the provisions of the bonds and notes for registration.

(c) The bonds may be issued as serial bonds or as term bonds, or the authority, in its discretion, may issue bonds of both types. The bonds shall be authorized by resolution of the members of the authority and shall bear such date or dates, mature at such time or times, not exceeding forty years from their respective dates, bear interest at such rate or rates, not exceeding 6% per annum, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, and be subject to such terms of redemption, as such resolution or resolutions may provide. The bonds or notes may be sold at public or private sale for such price or prices as the authority shall determine, but which shall not at the time of sale yield more than 6% per annum computed according to standard tables of bond values. Pending preparation of the definitive bonds, the authority may issue interim receipts or certificates which shall be exchanged for such definitive bonds.

(d) Any resolution or resolutions authorizing any bonds or any issue of bonds may contain provisions, which shall be a part of the contract with the holders of the bonds to be authorized, as to:

(i) pledging all or any part of the revenues of a project or any revenue producing contract or contracts made by the authority with any individual, partnership, corporation or association or other body, public or private, to secure the payment of the bonds or of any particular issue of bonds, subject to such agreements with bondholders as may then exist;

(ii) the mortgaging of a project and the site thereof for the purpose of securing the bondholders;

(iii) the rentals, fees and other charges to be charged, and the amounts to be raised in each year thereby, and the use and disposition of the revenues;

(iv) the setting aside of reserves or sinking funds, and the regulation and disposition thereof;

(v) limitations on the right of the authority or its agent to restrict and regulate the use of a project;

(vi) limitations on the purpose to which the proceeds of sale of any issue of bonds then or thereafter to be issued may be applied and pledging such proceeds to secure the payment of the bonds or any issue of the bonds;

(vii) limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured and the refunding of outstanding bonds;

(viii) the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds the holders of which must consent thereto, and the manner in which such consent may be given;

(ix) limitations on the amount of moneys derived from a project to be expended for operating, administrative or other expenses of the authority; and

(x) defining the acts or omissions to act which shall constitute a default in the duties of the authority to holders of its obligations and providing the rights and remedies of such holders in the event of a default.

(e) Neither the members of the authority nor any person executing the bonds or notes shall be liable personally on the bonds or notes or be subject to any personal liability or accountability by reason of the issuance thereof.

(f) The authority shall have power out of any funds available therefor to purchase its bonds or notes. The authority may hold, pledge, cancel or resell such bonds, subject to and in accordance with agreements with bondholders.

Section 8. TRUST AGREEMENT TO SECURE BONDS

In the discretion of the authority, any bonds issued under the provisions of this act may be secured by a trust agreement by and between the authority and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. Such trust agreement or the resolution providing for the issuance of such bonds may pledge or assign the revenues or other moneys to be received or proceeds of any contract or contracts pledged. Such trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as

may be reasonable and proper and not in violation of law, including particularly such provisions as have hereinabove been specifically authorized to be included in any resolution or resolutions of the authority authorizing bonds thereof. Any bank or trust company incorporated under the laws of this Commonwealth which may act as depository of the proceeds of bonds or of revenues or other moneys may furnish such indemnifying bonds or pledge such securities as may be required by the authority. Any such trust agreement may set forth the rights and remedies of the bondholders and of the trustee or trustees, and may restrict the individual right of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of such trust agreement or resolution may be treated as a part of the cost of construction or operation of a project.

Section 9. BONDS NOT OBLIGATIONS OF COMMONWEALTH OR POLITICAL SUBDIVISIONS

Bonds issued under the provisions of this act shall not be deemed to constitute a debt or liability of the Commonwealth or of any political subdivision thereof or a pledge of the faith and credit of the Commonwealth or of any such political subdivision, but shall be payable solely from the funds herein provided. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth of Pennsylvania nor the authority shall be obligated to pay the same or the interest thereon except from revenues or other moneys of the authority and that neither the faith and credit nor the taxing power of the Commonwealth of Pennsylvania or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such bonds. The issuance of bonds under the provisions of this act shall not directly or indirectly or contingently obligate the Commonwealth or any political subdivision thereof to levy or to pledge any form of appropriation or taxation whatever therefor.

Section 10. FIXING OF CHARGES—USE OF MONEYS

The authority is authorized to fix, revise, charge and collect rates, rents, fees and charges for the use of and for the services furnished or to be furnished by each project and to contract with any person, partnership, association or corporation, or other body, public or private, in respect thereof. Such rates, rents, fees and charges shall be fixed and adjusted in respect of the aggregate of rents, rates, fees and charges from such project so as to provide funds sufficient with other revenues or moneys, if any:

(a) to pay the cost of maintaining, repairing and operating the project and each and every portion thereof, to the extent that the payment of such cost

has not otherwise been adequately provided for;

(b) to pay the principal of and the interest on outstanding bonds of the authority issued in respect of such project as the same shall become due and payable; and

(c) to create and maintain reserves required or provided for in any resolution authorizing, or trust agreement securing, such bonds of the authority. Such rates, rents, fees and charges shall not be subject to supervision or regulation by any department, commission, board, body, bureau or agency of this Commonwealth other than the authority. A sufficient amount of the revenues derived in respect of a project, except such part of such revenues as may be necessary to pay the cost of maintenance, repair and operation and to provide reserves for renewals, replacements, extensions, enlargements and improvements as may be provided for in the resolution authorizing the issuance of any bonds of the authority or in the trust agreement securing the same, shall be set aside at such regular intervals as may be provided in such resolution or trust agreement in a sinking or other similar fund which is hereby pledged to, and charged with, the payment of the principal of and the interest on such bonds as the same shall become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made; the rates, rents, fees and charges and other revenues or other moneys so pledged and thereafter received by the authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the authority. The use and disposition of moneys to the credit of such sinking or other similar fund shall be subject to the provisions of the resolution authorizing the issuance of such bonds or of such trust agreement. Except as may otherwise be provided in such resolution or such trust agreement, such sinking or other similar fund shall be a fund for all such bonds issued to finance projects at a participating college without distinction or priority of one over another; provided the authority in any such resolution or trust agreement may provide that such sinking or other similar fund shall be the fund for a particular project at a participating college and for the bonds issued to finance a particular project and may, additionally, permit and provide for the issuance of bonds having a subordinate lien in respect of the security herein authorized to other bonds of the authority and, in such case, the authority may create separate sinking

or other similar funds in respect of such subordinate lien bonds.

Section 11. USE OF PROCEEDS

All moneys received pursuant to the authority of this act, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this act. Any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to such regulations as this act and the resolution authorizing the bonds of any issue or the trust agreement securing such bonds may provide.

Section 12. BONDHOLDERS—ENFORCEMENT OF RIGHTS AND DUTIES

Any holder of bonds issued under the provisions of this act or any of the coupons appertaining thereto, and the trustee or trustees under any trust agreement, except to the extent the rights herein given may be restricted by any resolution authorizing the issuance of, or any such trust agreement securing, such bonds, may, either at law or inequity, by suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this act or by such resolution or trust agreement to be performed by the authority or by any officer, employee or agent thereof, including the fixing, charging and collecting of the rates, rents, fees and charges herein authorized and required by the provisions of such resolution or trust agreement to be fixed, established and collected.

Section 13. REFUNDING BONDS

(a) The authority is hereby authorized to provide for the issuance of bonds of the authority for the purpose of refunding any bonds of the authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the earliest or subsequent date of redemption, purchase or maturity of such bonds, and, if deemed advisable by the authority, for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project or any portion thereof.

(b) The proceeds of any such bonds issued for the purpose of refunding outstanding bonds may, in the discretion of the authority, be applied to the purchase or retirement at maturity or redemption of such outstanding bonds either on their earliest or any subsequent redemption date or upon the purchase or at the maturity thereof and may, pending such application, be placed in escrow to be applied to such purchase or retirement at maturity or redemption on such date as may be determined by the authority.

(c) Any such escrowed proceeds, pending such use, may be invested and reinvested in obligations of or guaranteed by the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing at such time or times as shall be appropriate to assure the prompt payment, as to principal, interest and redemption premium, if any, of the outstanding bonds to be so refunded. The interest, income and profits, if any, earned or realized on any such investment may also be applied to the payment of the outstanding bonds to be so refunded. After the terms of the escrow have been fully satisfied and carried out, any balance of such proceeds and interest, income and profits, if any, earned or realized on the investments thereof may be returned to the authority for use by it in any lawful manner.

(d) The portion of the proceeds of any such bonds issued for the additional purpose of paying all or any part of the cost of constructing and acquiring additions, improvements, extensions or enlargements of a project may be invested and reinvested in obligations of or guaranteed by the United States of America, or in certificates of deposit or time deposits secured by obligations of or guaranteed by the United States of America, maturing not later than the time or times when such proceeds will be needed for the purpose of paying all or any part of such cost. The interest, income and profits, if any, earned or realized on such investment may be applied to the payment of all or any part of such cost or may be used by the authority in any lawful manner.

(e) All such bonds shall be subject to the provisions of this act in the same manner and to the same extent as other bonds issued pursuant to this act.

Section 14. BONDS AND NOTES AS SECURITIES FOR INVESTMENT

Bonds and notes issued by the authority under the provisions of this act are hereby made securities in which the Commonwealth and all political subdivisions of the Commonwealth, their officers, boards, commissions, departments or other agencies, all banks, bankers, savings banks, trust companies, savings and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations, and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees and other fiduciaries, and all other persons whatsoever who now are or may hereafter be authorized to invest in bonds or other obligations of the Commonwealth, may properly and legally invest any funds, including capital belonging to them or within their control; and said bonds, notes or other securities or obligations are hereby made securities which may properly and legally be deposited with and received by the Federal Reserve Bank, any state, or by municipal officers or agency of

the Commonwealth for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may hereafter be authorized by law.

Section 15. CONSENT OF COMMONWEALTH NOT REQUIRED

Bonds may be issued under the provisions of this act without obtaining the consent of any department, division, commission, board, bureau, agency or officer of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions and things which are specifically required by this act.

Section 16. TAX EXEMPTION

The exercise of the powers granted by this act will be in all respects for the benefit of the people of this Commonwealth, for the increase of their commerce, welfare and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of a project by the authority or its agent will constitute the performance of an essential public function, neither the authority nor its agent shall be required to pay any taxes or assessments upon or in respect of a project or any property acquired or used by the authority or its agent under the provisions of this act or upon the income therefrom, and any bonds or notes issued under the provisions of this act, their transfer and the income therefrom, including any profit made on the sale thereof, shall at all times be free from taxation of every kind, other than inheritance and estate taxation, within the Commonwealth of Pennsylvania.

Section 17. LIMITATION OF POWERS

The Commonwealth of Pennsylvania does pledge to and agree with the holders of the bonds, notes and other obligations issued pursuant to authority contained in this act, and with those parties who may enter into contracts with the authority pursuant to the provisions of this act, that the Commonwealth will not limit, alter or restrict the rights hereby vested in the authority and the participating colleges, or in any way impair the rights or remedies of the holders of such bonds, notes and obligations until such bonds, notes and obligations, together with interest thereon, are fully paid and discharged and such contracts are fully performed on the part of the authority. The authority as a public body corporate and politic shall have the right to include the pledge herein made in its bonds, notes and contracts.

Section 18. ANNUAL AUDIT

On or before May 30 in each year, the authority shall make an annual report of its activities for the preceding calendar year to the Governor and the Legislature. Each such report shall set forth a complete operating and financial statement covering the authority's operations during the year. The authority

shall cause an audit of its books and accounts to be made at least once in each year by certified public accountants. The cost of such reports and audits shall be borne by the authority from funds of the authority.

Section 19. EXAMINATION OF RECORDS

(a) The Auditor General and his legally authorized representatives are hereby authorized and empowered from time to time to examine the accounts and books of the authority, including its receipts, disbursements, contracts, sinking funds, investments and any other matters relating to its financial standing.

(b) The State Board of Education, or the Commissioner of Education, or their representatives, may visit, examine into and inspect, the authority and may require, as often as desired, duly verified reports therefrom giving such information and in such form as the board or the Commissioner of Education shall prescribe.

Section 20. SUPPLEMENTAL POWERS

The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing; provided, however, that the issuance of bonds or refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds.

Section 21. CONSTRUCTION OF ACT

(a) This act, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purposes thereof.

(b) If the provisions of any title, section or clause of this act or the application thereof to any person, party, corporation, public or private, shall be judged invalid by a court of competent jurisdiction, such order or judgment shall be confined in its operation to the controversy in which it was rendered, and shall not affect or invalidate the remainder of any provision of any title, section or clause of this act or the application of any part thereof to any other person, party, corporation or circumstance and, to this end, the provisions of each title, section and clause of this act are hereby declared to be severable. It is hereby declared as the legislative intent that this act would have been adopted had any provision declared unconstitutional not been included herein.

Section 22. EXERCISE OF POWERS—OTHER LAWS

The powers granted to the authority by this act may be exercised without regard or reference to any department or agency of the Commonwealth. All other general or special laws, or parts thereof, inconsistent with this act are hereby declared to be inapplicable to the provisions of this act.

Section 23. EFFECTIVE DATE

This act shall take effect immediately.